## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

Plaintiff,

VS.

AUTO-CHLOR SERVICES,
INC., and PIZZA HUT
OF AMERICA, INC.,

Defendants.

Plaintiff,

APR 19 1991

APR 19

#### ORDER OF DISMISSAL

NOW on this day of April, 1991, there comes on for hearing, the Motion of the plaintiff, Richard W. Tipton, for an Order dismissing the defendant, Auto-Chlor System, Inc. from this lawsuit without prejudice. The Court has reviewed the files and records in the case and finds that there is good cause for dismissing the defendant, Auto-Chlor System, Inc. from this lawsuit without prejudice.

IT IS THEREFORE ORDERED by the Court that the defendant, Auto-Chlor System, Inc. is hereby dismissed from this lawsuit without prejudice and that the plaintiff's rights are reserved against all remaining defendants.

JUDGE



1

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA for and on behalf of THE OSAGE TRIBE OF INDIANS,	) ) )
Plaintiff,	
vs.	) Case No. 90-C-407-C
DON R. CORNELIUS and NANCY L. CORNELIUS,	FILED
Defendants.	APR 19 1991

AGREED JUDGMENT

Jack C. Silver, Clerk U.S. DISTRICT COURT

This Agreed Judgment is entered into by and between the Plaintiff, The United States of America for and on behalf of The Osage Tribe of Indians, and the Defendant, Don R. Cornelius, ONLY. The Court has been advised by counsel for the Plaintiff, Phil Pinnell, Assistant U.S. Attorney for the Northern District of Oklahoma, and counsel for the Defendant, W. Michael Hackett, that the parties have entered into negotiations, made offers and counteroffers of settlement, and have reached agreement regarding the settlement of claims asserted by Plaintiff and counterclaims asserted by Defendant.

The Court has been advised by counsel and enters the following judgment as agreed to by the parties:

- 1. The Plaintiff shall be awarded judgment against Defendant Don R. Cornelius, ONLY, in the amount of \$5,000, said judgment to accrue interest at the rate of \_\_\_\_\_\_ percent (4.26%) per annum.
- 2. The Plaintiff shall not execute on this judgment, but shall be notified by Defendant within thirty (30) days after the Court in the divorce action styled <u>Cornelius v. Cornelius</u>, FD-85-

8107, in the District Court of Oklahoma County, Oklahoma, issues its written decision. The Defendant shall at the time of this notification propose to Plaintiff reasonable payment arrangements, including a security interest in the property awarded to him as his separate property by the divorce Court.

- 3. Defendant shall be obligated to plug the six (6) wells on the two tracts referenced in Plaintiff's Complaint. Said well plugging shall be accomplished within nine (9) months from the date this judgment is filed, in accordance with all applicable laws and regulations in effect at the time the leases were canceled. Provided, Plaintiff shall be under a continuing good faith obligation to re-lease the two tracts, in which event Defendant shall be relieved of his well plugging obligations accordingly.
- 4. The parties agree that this Agreed Judgment shall satisfy all of Plaintiff's claims against Defendant Don R. Cornelius arising out of the oil and gas lease transactions and a prior Settlement Agreement which gave rise to this litigation, or any claims which resulted from any prior dealings of the parties, as reflected in a separate agreement to be signed by the parties and their respective counsel. Defendant shall have no further obligations thereunder, except fulfillment of the terms of this Agreed Judgment.
- 5. Defendant's counterclaims asserted against Plaintiff shall be dismissed as part of this Agreed Judgment simultaneously with its filing.
- 6. This Agreed Judgment shall not affect Plaintiff's right to assert its claims against the remaining Defendant, Nancy L. Cornelius.

The Court having reviewed the terms and conditions of this Agreed Judgment finds that they are reasonable and approves them as set forth herein.

IT IS SO ORDERED.

SIGNED this 19 day of April , 1991.

(Signed) H. Dale Cook

Judge of the District Court

TERMS REVIEWED AND APPROVED:

Phil Pinnell, Assistant U.S. Attorney

Attorney for Plaintiff

Date: Nitach 21, 1991

Attorney for Plaintiff

Date: 1001.00 00 1901

# RECOLUTION of the connectant council

No. 23-92

#### WHEREAS.

- 1. The esage Tribal Council is the sleated governing body of the Csage Tribe of Indians, and
- 2. That Don and Nandy Cornelius, as former oil and gas leasees, owe the Osage Tribe the sum of \$11,110.00, plus the obligation to plug six wells in their former Sand Creek lease, and
- 3. An offer of settlement has been received from for Cornelius, whereby he agrees to plug the six wells, at his expense, within 9 months of the signing of the agreement and will, in addition, allow the Tribe to take a judgment against him in the Federal Court for the sum of \$5,000.00, and
- 4. A motion for summary judgment, against Nancy Cournelius, has been filed, requesting judgment in the amount of \$8,118.00:

#### RESOLVED,

- 1. The Osage Tribal Council, the elected governing body of the Osage Tribe of Indians, does hereby agree to the settlement and judgment, as offered by Don Cornelius.
- 2. The Principal Chief, or in his absence the Acting Principal Chief, is hereby authorized to execute the Settlement Agreement with Don Cornelius, as is attached and made a part of this resolution.

#### CERTIFICATION

I hereby certify that this Resolution was considered by the Osage Tribal Council at a duly called meeting at Pawhuska, Oklahoma, at which a quorum was present and that the same was adopted by a vote of Seven (7) in favor and None (0) against, this 20st day of February 1991.

Principal Chief

ATTEST:

Secretary

# SETTLEMENT AGREEMENT AND RELEASE BETWEEN THE OSAGE TRIBE OF INDIANS AND DON R. CORNELIUS

This Settlement Agreement and Release (hereinafter collectively "Agreement") is entered into by and between THE OSAGE TRIBE OF INDIANS by and through its Principal Chief (hereinafter "Tribe") and DON R. CORNELIUS regarding certain claims being asserted by the Tribe and counterclaims being asserted by Mr. Cornelius.

#### WITNESSETH

WHEREAS, the Tribe and Don R. Cornelius and Nancy L. Cornelius entered into two (2) separate oil and gas leases, the BP Ochelata (Lease) Unit K No. 14-20-201-378 and the Sand Creek (Lease) Unit K No. 14-20-G06-1284-0 (hereinafter collectively "Leases") which created certain operational and payment obligations on the part of Don R. Cornelius and Nancy L. Cornelius; and,

WHEREAS, the Tribe and Don R. Cornelius along with Nancy L. Cornelius entered into a Settlement Agreement and Release signed by those parties in June and July of 1985 regarding an installment payment arrangement for underpaid royalties to the Tribe (hereinafter collectively "Settlement Agreement"); and,

WHEREAS, Don R. Cornelius and Nancy L. Cornelius were unable to fulfill the terms of payment promised and the Leases were subsequently cancelled; and,

WHEREAS, the Tribe with the assistance of the U.S. Attorney's office for the Northern District of Oklahoma, filed an action in the United States District Court styled <u>United States of America for and on behalf of the Osage Tribe of Indians, Plaintiff v. Don R. Cornelius and Nancy L. Cornelius, Defendants, Civil Action No. 90-C-407-C (hereinafter "Lawsuit"), seeking to collect certain sums from Don R. Cornelius and Nancy L. Cornelius regarding non-payment under the Settlement Agreement plus additional royalty payments, late charges, and well plugging costs; and,</u>

WHEREAS, the Tribe and its authorized agents and representatives tendered a settlement offer dated November 27, 1990 to Don R. Cornelius and Nancy L. Cornelius in the amount of \$13,118, plus the plugging of six (6) wells on the individual lease known as the Sand Creek unit, representing the total liability owed by Don R.

Cornelius and Nancy L. Cornelius jointly and severally under the Leases and Settlement Agreement; and,

WHEREAS, the Tribe and Don R. Cornelius, individually and on his own behalf, desire to settle the Tribe's claims against Mr. Cornelius, while leaving the Tribe free to pursue its claims against Nancy L. Cornelius; and,

WHEREAS, the Tribe, through its attorneys, agents, and employees, has been made aware of the divorce action pending in District Court of Oklahoma County between Don R. Cornelius and Nancy L. Cornelius and the limitation that litigation has had on Don R. Cornelius' access to his property held in joint tenancy and to funds with which to pay or collateralize immediately any settlement amount agreed to; and,

WHEREAS, both the Tribe and Don R. Cornelius desire to settle all of the Tribe's claims against Don R. Cornelius arising out of the Leases, Settlement Agreement, or Lawsuit and Don R. Cornelius' counterclaims in order to avoid the expense, time, effort, and uncertainty of litigation, the parties agree to the following:

#### TERMS AND CONDITIONS

#### 1.0 JUDGMENT

Don R. Cornelius agrees to allow the Tribe to take a judgment against him in the Lawsuit in the amount of \$5,000, accruing interest at the current rate applicable in Federal court, plus well plugging obligations as discussed in paragraph 4.0 below.

#### 2.0 FOREBEARANCE

The Tribe agrees not to execute on this judgment because of Don R. Cornelius' financial situation and the fact that his assets are currently subject to the jurisdiction of the divorce court.

#### 3.0 PAYMENT TERMS AND SECURITY

Don R. Cornelius agrees within thirty (30) days after the divorce court has issued its written decision to advise the Tribe through its representative, the U.S. Attorney's office, and to propose a schedule of payments to satisfy the Tribe's judgment. At the same time, Don R. Cornelius agrees to offer the Tribe a security interest in property awarded to him by the divorce court as his separate property.

#### 4.0 WELL PLUGGING

As a further condition of this Agreement, Don R. Cornelius agrees within nine (9) months from the date the agreed judgment is filed to plug the six (6) wells referred to in the Lawsuit as remaining unplugged, in accordance with all applicable laws and regulations in effect at the time the leases were canceled. Provided, that the Tribe is under an obligation to make a good faith effort to re-lease the two tracts where those wells are located, as it has other tracts covered by the Leases. In the event one or both of the tracts are released, Don R. Cornelius shall be relieved from his well plugging responsibility for the wells located on those tracts so re-leased.

#### 5.0 RELEASE OF CLAIMS BY TRIBE

In exchange for the agreed judgment, payment, and security arrangements described in paragraphs 1.0 and 3.0 above, and the well plugging arrangements described in paragraph 4.0 above, the Tribe agrees to release any claims it now has or may have against Don R. Cornelius arising from the Leases, Settlement Agreement, Lawsuit, or from any other source, including any claims of fixed or contingent liability, any claims based on any past dealings between the parties, and any claims the Tribe may assert against Nancy L. Cornelius. It is the express intent of the parties that all claims be satisfied between them without affecting the Tribe's ability to pursue its separate claims against Nancy L. Cornelius, provided that Don R. Cornelius shall have no liability to the Tribe for any claims so asserted.

#### 6.0 RELEASE OF COUNTERCLAIMS

Don R. Cornelius agrees as part of this Agreement to release, relinquish, and give up any counterclaims he may have resulting from the Leases, Settlement Agreement, or Lawsuit, including any claims for any past dealings between the parties. Don R. Cornelius agrees that the counterclaims he has asserted in the Lawsuit shall be dismissed as part of the agreed judgment.

#### 7.0 INTERPRETATION

This Agreement shall be interpreted and enforced under the laws of the State of Oklahoma.

#### 8.0 BINDING EFFECT

The parties acknowledge that they have conferred with their respective attorneys and representatives, have received their advice and counsel, have read and understand this Agreement, and have determined that the terms of this Agreement are fair and reasonable. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, representatives, and assigns.

SIGNED this 20th day of Much, 1991.

OSAGE TRIBE OF INDIANS

by Chule Difference Principal Chief

SIGNED this 20 day of March, 1991.

William Haney, Acting Field Solicitor
U.S. Department of Interior
Bureau of Indian Affairs
Osage Agency

SIGNED this 20 day of Mech, 1991.

TONY M. GRAHAM, U.S. Attorney

Phil Pinnell, Assistant U.S. Attorney

ATTORNEYS FOR THE OSAGE TRIBE OF INDIANS

SIGNED this 2/ day of March, 1991.

Alm Bom

Don R. Cornelius

SIGNED this 197 day of MANCH, 1991.

W. Michael Hackett

ATTORNEY FOR DON R. CORNELIUS

A.

IN THE UNITED STATE FOR THE NORTHERN DIS	TRICT OF OKLAHOMA
CIRCLE T. FOODS COMPANY, INC., d/b/a STATE FAIR FOODS, INC.,	JACK C. SILVER, CLERK U.S. DISTRICT COURT
Plaintiff,	<u> </u>
vs.	) Case No. 90-C-854-B
JACK SANSTRA d/b/a FLETCHER'S,	ý
Defendant.	} of

DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Circle T Foods Company, Inc. d/b/a State Fair Foods, Inc., and dismisses this cause of action against the Defendant, Jack Sanstra d/b/a Fletcher's, without prejudice to any further cause of action for the reason that the issues have been fully compromised and settled.

James M. Sturdivant, OBA #8723 Renée DeMoss, OBA #10779 GABLE & GOTWALS, INC. 2000 Fourth National Bank Building Tulsa, Oklahoma 74119

ATTORNEYS FOR PLAINTIFF

(918) 582-9201

#### CERTIFICATE OF MAILING

The undersigned hereby certifies that on the  $\frac{1}{2}$  day of April, 1991, a true and correct copy of the foregoing instrument was mailed by depositing the same in the U.S. Mails, with proper postage fully prepaid thereon, addressed to: Mr. Jack Sanstra, c/o Fletcher's, 6002 S. Sheridan, Tulsa, Oklahoma 74145, Defendant.

Renée DeMoss

# UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY L. LORD; TERESA A. LORD; FIDELITY FINANCIAL SERVICES, INC.; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma,

Defendants.

FILED

APR 19 1991

Jack C. Silver, Clerk U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-716-B

#### JUDGMENT OF FORECLOSURE

The Court being fully advised and having examined the court file finds that the Defendant, Fidelity Financial Services, Inc., acknowledged receipt of Summons and Complaint on August 23, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 24, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 24, 1990.

dm

The Court further finds that the Defendants, Terry L. Lord and Teresa A. Lord, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning January 14, 1991, and continuing through February 18, 1991, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Terry L. Lord and Teresa A. Lord, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Terry L. Lord and Teresa A. Lord. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Farmers Home Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by

publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on September 12, 1990; and that the Defendants, Terry L. Lord, Teresa A. Lord, and Fidelity Financial Services, Inc., have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 17, Block 6, Scottsdale Addition, An Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on August 15, 1983, the Defendants, Terry L. Lord and Teresa A. Lord, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$32,500.00, payable in monthly installments, with interest thereon at the rate of 10.75 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Terry L.

Lord and Teresa A. Lord, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated August 15, 1983, covering the above-described property. Said mortgage was recorded on September 8, 1983, in Book 4725, Page 535, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 15, 1983, the Defendants, Terry L. Lord and Teresa A. Lord, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on April 16, 1984, the Defendants, Terry L. Lord and Teresa A. Lord, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on November 1, 1984, the Defendant, Teresa A. Lord, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendants, Terry L. Lord and Teresa A. Lord, made default under the terms of the aforesaid note, mortgage, and interest credit agreements by

reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Terry L. Lord and Teresa A. Lord, are indebted to the Plaintiff in the principal sum of \$35,326.93, plus accrued interest in the amount of \$15,541.17 as of October 6, 1989, plus interest accruing thereafter at the rate of 10.75 percent per annum or \$10.4045 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$4,016.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$322.60 (\$20.00 docket fees, \$302.60 publication fees).

The Court further finds that the Defendant, Fidelity Financial Services, Inc., is in default and therefore has no right, title or interest in the subject real property.

The Court further finds that the Defendants, County
Treasurer and Board of County Commissioners, Tulsa County,
Oklahoma, claim no right, title or interest in the subject real
property.

Plaintiff have and recover judgment in rem against the Defendants, Terry L. Lord and Teresa A. Lord, in the principal sum of \$35,326.93, plus accrued interest in the amount of \$15,541.17 as of October 6, 1989, plus interest accruing thereafter at the rate of 10.75 percent per annum or \$10.4045 per day until judgment, plus interest thereafter at the current legal rate of 10.14 percent per annum until fully paid, and the

further sum due and owing under the interest credit agreements of \$4,016.00, plus interest on that sum at the current legal rate of ball percent per annum from judgment until paid, plus the costs of this action in the amount of \$322.60 (\$20.00 docket fees, \$302.60 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Fidelity Financial Services, Inc., and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

#### First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

#### Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM United States Attorney

PHIL PINNELL, OBA #7169

Assistant United States Attorney

3600 U.S. Courthouse Tulsa, Oklahoma 74103

(918) 581-7463

J.//DENNIS SEMLER, OBA #8076

Assistant District Attorney

Attorney for Defendants,

County Treasurer and Board of County Commissioners,

Tulsa County, Oklahoma

Judgment of Foreclosure Civil Action No. 90-C-716-B

PP/css

### UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

FILED

Plaintlii,

APR 19 1991

vs.

Jack C. Silver, Clerk U.S. DISTRICT COURT

MELVIN HOLT; AUDREY M. HOLT; COUNTY TREASURER, Rogers County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma,

Defendants.

CIVIL ACTION NO. 91-C-0082-B

#### ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Veterans Affairs, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 19th day of April , 1991.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM

United States Attorney

KATHLEEN BLISS ADAMS, OBA #13625 Assistant United States Attorney

3600 U.S. Courthouse Tulsa, Oklahoma 74103

(918) 581-7463

KBA/esr

### UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED	STATES	OF	AMERICA,	)
		<b>P</b> .	laintiff,	)

vs.

WILLIAM R. COATES; STATE OF )
OKLAHOMA <u>ex rel.</u> OKLAHOMA TAX )
COMMISSION; COUNTY TREASURER, )
Tulsa County, Oklahoma; and )
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma,

Defendants.

FILED

APR 18 1991

Jack C. Silver, Clerk U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-235-C

#### AMENDED JUDGMENT OF FORECLOSURE

This matter comes on for consideration this \_/7 day of \_\_\_\_\_\_\_\_, 1991. The Plaintiff appears by Tony M.

Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States

Attorney; the Defendant, State of Oklahoma ex rel. Oklahoma Tax

Commission appears by Lisa Haws, Assistant General Counsel; the Defendants County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendant, William R. Coates, appears not, but makes default.

The Court being fully advised and having examined the file herein finds that the Defendant, William R. Coates, acknowledged receipt of Summons and Complaint on May 5, 1990; that Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on March 22, 1990; that Defendant, County Treasurer, Tulsa County,

NOTE: THIS ORDER IS TO BE MAILED BY MOVING TO ALL CORNISEL AND FRO SE LITIGANTS IMMEDIATELY UPON RECEIPT. Oklahoma, acknowledged receipt of Summons and Complaint on March 22, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 22, 1990.

It appears that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission filed its Answer on April 17, 1990; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answer on April 11, 1990; and that the Defendant, William R. Coates, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Seven (7), Block One (1), in XYLER HEIGHTS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that William J. Coates and Thelma Coates became the record owners of the real property involved in this action, by virtue of that certain Warranty Deed dated March 21, 1974, from Donald E. Johnson, as Administrator of Veterans Affairs, to William J. Coates and Thelma Coates, husband and wife, as joint tenants and not as tenants in common, with full right of survivorship, the whole estate to vest in the

survivor in the event of the death of either, which Warranty Deed was filed of record on March 25, 1974, in Book 4111, Page 897, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on March 22, 1974, William J. Coates and Thelma Coates executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage note in the amount of \$9,500.00, payable in monthly installments, with interest thereon at the rate of 8.25 percent (8.25%) per annum.

The Court further finds that as security for the payment of the above-described note, William J. Coates and Thelma Coates executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a real estate mortgage dated March 22, 1974 covering the above-described property. Said mortgage was recorded on March 25, 1974 in Book 4111, Page 913, in the records of Tulsa County, Oklahoma.

The Court further finds that, on June 10, 1985, Thelma Coates died as was determined in the Decree Determining Death and Terminating Tenancy, Case No. P-86-590, dated September 22, 1986 and recorded on September 22, 1986, in the District Court, Tulsa County, Oklahoma. Upon the death of Thelma Coates, the subject property vested in her surviving joint tenant, William J. Coates, by operation of law.

The Court further finds that, on May 14, 1986, William J. Coates executed a Quit-Claim Deed conveying all his right, title, and interst in the subject real property to William R. Coates. This Quit-Claim Deed was recorded on October 31, 1986, in Book 4979, Page 1936, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, William J. Coates and Thelma Coates, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof, there is now due and owing to the Plaintiff the principal sum of \$7,670.99 plus interest at the rate of 8.25 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$4.00 for service of Summons and Complaint.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Tax Warrant No. ITI89002756 dated February 17, 1989 in the amount of \$246.33 plus interest and penalty according to law.

The Court further finds that the Defendants, County
Treasurer and Board of County Commissioners, Tulsa County,
Oklahoma, claim no right, title or interest in the subject real
property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, William R. Coates, in the principal sum of \$7,670.99, plus interest at the rate of 8.25 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the current legal rate of 6.26 percent per annum until paid, plus the costs of this action in the amount of \$4.00 for service of Summons and Complaint, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defenant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in rem in the amount of \$246.33 plus interest and penalty according to law by virtue of Tax Warrant No. IT189002756 dated February 17, 1989.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

#### First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

#### Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

#### Third:

In payment of the Defendant, State of Oklahoma ex rel.
Oklahoma Tax Commission, in the amount of \$246.33
together with interest and penalty according to law.

#### Fourth:

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM

United States Attorney

PETER BERNHARDT, OBA #741

Assistant United States Attorney

J./DENNIS SEMLER, OBA #8076 Assistant District Attorney

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Tulsa County, Oklahoma

LISA HAWS, OBA/#12,695 Assistant General Counsel

Attorney for State of Oklahoma ex rel.

Oklahoma Tax Commission

Amended Judgment of Foreclosure Civil Action No. 90-C-235-C

PB/esr

### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT BENNY PIERCE, for the
Deceased Tammy Sue Pierce, as
spouse; ROBERT PIERCE, as personal )
representative of the Estate of
Tammy Sue Pierce, Deceased; and
ROBERT BENNY PIERCE, Individually,

Plaintiff,

v.

)

BURLINGTON NORTHERN RAILROAD COMPANY,

Defendant.

Case No. 89-C-1046-C

FILED

APR 17 1991

Jack C. Silver, Clerk U.S. DISTRICT COURT

#### ORDER DISMISSING WITH PREJUDICE

FOR GOOD CAUSE SHOWN and upon application of the parties herein, this case and all causes of action arising from the accident and death that is the subject of this lawsuit are hereby dismissed with prejudice to their ever being refiled.

The Honorable H. Dale Cook United States District Judge

FILED

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

APR 17 1991

UNITED STATES OF AMERICA,

Plaintiff,

Jack C. Silver, Clerk U.S. DISTRICT COURT

vs.

CHARLES D. BROWN; BETTY JO BROWN; BILL HAYNES COMPANY; BRIERCROFT SERVICE CORPORATION; COUNTY TREASURER, Tulsa County, Oklahoma; BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma; GOLDOME; and REMODELERS NATIONAL FUNDING CORP.,

Defendants.

CIVIL ACTION NO. 90-C-658-E

#### JUDGMENT OF FORECLOSURE

of \_\_\_\_\_\_\_\_, 1991. The Plaintiff appears by Tony M.

Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; the Defendants, Charles D. Brown and Betty Jo Brown, appear by their attorney, Robert A. Todd; the Defendant, Bill Haynes Company, appears not having previously filed its Disclaimer; and the Defendants, Briercroft Service Corporation, Goldome, and Remodelers National Funding Corp. appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Charles D. Brown, acknowledged receipt of Summons and Complaint on January 24,

1991; that the Defendant, Betty Jo Brown, acknowledged receipt of Summons and Complaint on January 24, 1991; that the Defendant, Briercroft Service Corporation, acknowledged receipt of Summons and Complaint on August 9, 1990; that Defendant, Goldome, acknowledged receipt of Summons and Amended Complaint on November 19, 1990 and on January 29, 1991; that Defendant, Remodelers National Funding Corp., acknowledged receipt of Summons and Amended Complaint on October 25, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 2, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 2, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed his Answer on August 22, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed his Answer on August 22, 1990; that the Defendants, Charles D. Brown and Betty Jo Brown, filed their Answer on January 28, 1991; that the Defendant, Bill Haynes Company, filed its Disclaimer on August 13, 1990; and that the Defendants, Briercroft Service Corporation, Goldome, and Remodelers National Funding Corp., have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on October 23, 1990, Charles David Brown and Betty Jo Brown, filed their voluntary

petition in bankruptcy in Chapter 7 in the United States
Bankruptcy Court, Northern District of Oklahoma,
Case No. 90-03221-C. On January 14, 1991, the United States
Bankruptcy Court for the Northern District of Oklahoma entered
its order modifying the automatic stay afforded the debtors by
11 U.S.C. § 362 and directing abandonment of the real property
subject to this foreclosure action and which is described below.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Four (4), Block Six (6), FRIENDLY HOMES ADDITION, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on August 1, 1983, the Defendants, Charles D. Brown and Betty Jo Brown, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$38,500.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Charles D. Brown and Betty Jo Brown, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a

mortgage dated August 1, 1983, covering the above-described property. Said mortgage was recorded on August 2, 1983, in Book 4712, Page 1182, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Charles D. Brown and Betty Jo Brown, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Charles D. Brown and Betty Jo Brown, are indebted to the Plaintiff in the principal sum of \$37,133.57, plus interest at the rate of 11.5 percent per annum from December 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, County
Treasurer and Board of County Commissioners, Tulsa County,
Oklahoma, claim no right, title or interest in the subject real
property.

The Court further finds that the Defendants, Briercroft Service Corporation, Goldome, and Remodelers National Funding Corp., are in default and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, Bill Haynes Company, disclaims any right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment <u>in rem</u> against the

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Briercroft Service Corporation, Goldome, Remodelers National Funding Corp., County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Bill Haynes Company, disclaims any right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

#### First:

In payment of the costs of this action accrued and accruing incurred by the

Plaintiff, including the costs of sale of said real property;

#### Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY, M. GRAHAM

United States Attorney

PETER BERNHARDT, OBA #741

Assistant United States Attorney

3600 U.S. Courthouse

Tulsa, Oklahoma 74103

(918) 581-7463

ROBERT A. TODD, OBA #9042

Attorney for Defendants,

Charles D. Brown and Betty Jo Brown

J. DANNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure Civil Action No. 90-C-658-E

PB/esr

### UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	FILED
Plaintiff,	APR 1 7 1991
VICTOR J. PARKER; DANETTA M.  PARKER; COUNTY TREASURER, Ottawa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Ottawa County, Oklahoma,	Jack C. Silver, Clerk U.S. DISTRICT COURT
Defendants. )	CIVIL ACTION NO. 90-C-886-E

#### JUDGMENT OF FORECLOSURE

The Court being fully advised and having examined the court file finds that the Defendants, Victor J. Parker and Danetta M. Parker, acknowledged receipt of Summons and Complaint on October 25, 1990; that Defendant, County Treasurer, Ottawa County, Oklahoma, acknowledged receipt of Summons and Complaint on or about October 29, 1990.

It appears that the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners,

Ottawa County, Oklahoma, filed their Answer on February 20, 1991; that the Defendants, Victor J. Parker and Danetta M. Parker, filed their Answer on January 16, 1991.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots 9 and 10 and the North Half of Lot 11 in Block 7 in ROCKHILL ADDITION to the City of Miami, Ottawa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 27, 1987, the Defendants, Victor J. Parker and Danetta M. Parker, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$22,000.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Victor J. Parker and Danetta M. Parker, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated March 27, 1987, covering the above-described property. Said mortgage was recorded on March 27, 1987, in Book 458, Page 188, in the records of Ottawa County, Oklahoma.

The Court further finds that the Defendants, Victor J. Parker and Danetta M. Parker, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Victor J. Parker and Danetta M. Parker, are indebted to the Plaintiff in the principal sum of \$21,567.08, plus interest at the rate of 9 percent per annum from November 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County
Treasurer and Board of County Commissioners, Ottawa County,
Oklahoma, claim no right, title or interest in the subject real
property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Victor J. Parker and Danetta M. Parker, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

#### First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

#### Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

5/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

#### APPROVED:

TONY M. GRAHAM United States Attorney

PHIL PINNELL, OBA #7169

Assistant United States Attorney

3600 U.S. Courthouse Tulsa, Oklahoma 74103

(918) 581-7463

MARVIN L. SMITH, OBA #13006

Attorney for Defendants,

Victor J. Parker and Danetta M. Parker

BARRY DENNEY, OBA #

Assistant District Attorney

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Ottawa County, Oklahoma

Judgment of Foreclosure Civil Action No. 90-C-886-E

PP/css

APR 17 1991

UNITED STATES OF AMERICA for and on behalf of the OSAGE TRIBE OF INDIANS, Plaintiff, No. 90-C-407-C

DON R. CORNELIUS and NANCY L. CORNELIUS, et al.,

Defendants.

ORDER

Before the Court is the motion of the plaintiff for summary judgment against defendant Nancy L. Cornelius. Defendant has not responded within the time permitted; and pursuant to Rule 15 of the Local Rules, the motion is deemed confessed. In addition, the Court has independently reviewed the file and finds that the motion should be granted.

It is the Order of the Court that the motion of the plaintiff for summary judgment against defendant Nancy L. Cornelius is hereby GRANTED.

IT IS SO ORDERED this \_\_\_\_\_ day of April, 1991.

Chief Judge, U. S. District Court

APR 17 1991

UNITED STATES OF AMERICA for and on behalf of the OSAGE TRIBE OF INDIANS,

Plaintiff,

Vs.

DON R. CORNELIUS and NANCY L. CORNELIUS, et al.,

Defendants.

#### JUDGMENT

This action came before the Court upon the motion of the plaintiff for summary judgment and the issues having been duly considered and a decision having been duly rendered,

IT IS SO ORDERED AND ADJUDGED that the plaintiff recover of the defendant, Nancy L. Cornelius, the sum of \$8,118.00, post judgment interest at the rate of 6.26 percent as provided by law, and its costs of action.

IT IS SO ORDERED this \_\_\_\_\_ day of April, 1991.

H. DALE COOK

Chief Judge, U. S. District Court

NORMA JANE LUMPKIN,		)	
	Plaintiff,	)	
v.		)	90-C-836-C <b>FILED</b>
HOWARD RAY, et al,		) )	APR 17 1991
	Defendants.	) ORDER	Jack C. Silver, Clerk U.S. DISTRICT COURT

The Court has for consideration the <u>Report and Recommendation</u> of the <u>United</u> States Magistrate Judge filed March 19, 1991 in which the <u>Magistrate Judge recommended</u> that the <u>Petition for Writ of Habeas Corpus</u> be **denied**.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the <u>Report and Recommendation</u> of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the Petition for Writ of Habeas Corpus is denied.

Dated this 16 day of amu, 1991

H. DALE COOK, CHIEF JUDGE UNITED STATES DISTRICT COURT

FILED

UNITED	STATES	OF	AMERICA,
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Plaintiff,

vs.

RODGER SOLT; SHIRLEY SOLT; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma,

Defendants.

APR 1 7 1991

Jack C. Silver, Clerk U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-1016-E

#### DEFICIENCY JUDGMENT

This matter comes on for consideration this day

of day, 1991, upon the Motion of the Plaintiff, United

States of America, acting on behalf of the Secretary of Veterans

Affairs, for leave to enter a Deficiency Judgment. The Plaintiff

appears by Tony M. Graham, United States Attorney for the

Northern District of Oklahoma, through Kathleen Bliss Adams,

Assistant United States Attorney, and the Defendants, Rodger Solt

and Shirley Solt, appear neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed to Rodger Solt and Shirley Solt, P.O. Box 85, Sperry, Oklahoma 74073, and all counsel and parties of record.

The Court further finds that the amount of the Judgment rendered on February 15, 1990, in favor of the Plaintiff United States of America, and against the Defendants, Rodger Solt and Shirley Solt, with interest and costs to date of sale is \$48,663.18.

The Court further finds that the appraised value of the creal property at the time of sale was \$15,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered February 15, 1990, for the sum of \$13,334.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 28th day of March , 1991.

The Court further finds that the Plaintiff, United
States of America on behalf of the Secretary of Veterans Affairs,
is accordingly entitled to a deficiency judgment against the
Defendants, Rodger Solt and Shirley Solt, as follows:

Principal Balance as of 2-15-90	\$37,380.92
Interest	9,136.69
Late Charges to Date of Judgment	359.04
Appraisal by Agency	500.00
Management Broker Fees to Date of Sale	800.95
Abstracting	115.00
Publication Fees of Notice of Sale	145.58
Court Appraisers' Fees	225.00
TOTAL	\$48,663.18
Less Credit of Appraised Value -	15,500.00
DEFICIENCY	\$33,163.18

plus interest on said deficiency judgment at the legal rate of  $(\rho, \partial C)$  percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of

Judgment rendered herein and the appraised value of the property ': herein.

United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Rodger Solt and Shirley Solt, a deficiency judgment in the amount of \$33,163.18, plus interest at the legal rate of Lodo percent per annum on said deficiency judgment from date of judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM United States Attorney

KATHLEEN BLISS ADAMS, OBA #13625 Assistant United States Attorney 3600 U.S. Courthouse Tulsa, Oklahoma 74103 (918) 581-7463

KBA/css

APR 17 1991

U.S. DISTRICT COURT

THE FEDERAL DEPOSIT INSURANCE CORPORATION,

Plaintiff,

vs.

No. 89-C-909-E

THOMSON ENERGY MANAGEMENT, INC., et al.

Defendants.

#### STIPULATION OF DISMISSAL

Plaintiff, the Federal Deposit Insurance Corporation ("FDIC"), and all Defendants who have entered an appearance in this action ("Appearing Defendants"), hereby stipulate that FDIC's claims in this action shall be and hereby are dismissed without prejudice to the refiling thereof (except for the claims giving rise to FDIC's judgments against Thomson Energy and Travis Thomson, which judgments have been assigned to Charles H. Major, Trustee), and the Counterclaim and Crossclaim filed in this action by the Appearing Defendants shall be and hereby are dismissed with prejudice to the refiling thereof, with each party to bear his, her or its attorneys' fees and costs incurred in the action.

Richard B. Noulles

GABLE & GOTWALS

2000 Fourth National Bank Bldg. Tulsa, Oklahoma 74119-5447

(918) 582-9201

ATTORNEY FOR FEDERAL DEPOSIT INSURANCE CORPORATION

Neal E. Tomlins

BAKER, HOSTER, McSPADDEN, CLARK, RASURE & SLICKER

800 Kennedy Building Tulsa, Oklahoma 74103 (918) 592-5555

ATTORNEY FOR DEFENDANTS, JOSEPH B. AVANT, ALBION DEBREE, REGINALD CRUMP, ROBERT FOLSOM, ROBERT HIGGENBOTHAM, HERBERT HINDLER, BILL KOHN, MRS. EUGENE MAZZEI, EUGENE MAZZEI, BOBBY McMILLAN, DON PLUNK, JAMES RUSSELL, MARY RUSSELL, HARRIS SILVERMAN, JAMES SKOW, CARL SUMMERS, GEORGE TANNOUS, JACKIE TINDEL, C. H. ATCHISON, RICHARD WOOLSLAYER, EDDIE CAUTHRON, MRS. IRVING FENSTER, WILLIAM GORDON, BILL HILLIARD, COPPI KOHN, J. B. PARKS, JR., J. B. PARKS WHOLESALE FLORIST, INC., a Texas Corporation, ROBERT SHAW, MARTHA STINNETTE, W. T. STOKES, III, WILLIAM STOKES, WILLIAM WATSON, BRENDA SHOLEEN, JACK STROUBE, O. DARA STEVENSON, CHARLES H.

("APPEARING DEFENDANTS")

MAJOR, TRUSTEE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

APR 1 6 1991

IN RE:

Jack C. Silver, Clerk U.S. DISTRICT COURT

REPUBLIC FINANCIAL CORPORATION, an Oklahoma corporation,

Case No. 84-01460 (Chapter 11)

Debtor.

R. DOBIE LANGENKAMP, Successor Trustee,

District Court No. 9I-C-0016-B

vs.

KEMAL SAIED and CONSTANCE G. SAIED,

Defendants.

Plaintiff,

Adversary No. 85-302 (Clark)

#### STIPULATION OF DISMISSAL

COMES NOW the Plaintiff and in consideration of the settlement of the above proceedign and in accorance with Rule 41(a)(1)(ii) Fed. R. Civ. Proc. hereby stipulates to the dismissal of the above-styled and numbered cause with prejudice.

> DOERNER, STUART, SAUNDERS, DANIEL & ANDERSON

BY'Sam G) Bratton /II

John J. Carwile

320 South Boston, Suite 500 Tulsa, Oklahoma 74103

(918) 582-1211

Attorneys for R. Dobie Langenkamp, Successor Trustee

APPROVED:

CONNER & WINTERS

BY:

Tony W. Haynie 2400 First Nationa/ Tower 44103 Tulsa, Oklahoma

(918) 586-8954

Attorneys for Kemal Saied and Constance G. Saied

FILED

APR 1 6 1991

UNITED STATES OF AMERICA, )	Jack C. Sliver, Clerk U.S. DISTRICT COURT
Plaintiff, )	
vs.	CIVIL ACTION NO. 90-C-178-B
FORREST M. STRATTON ) a/k/a FORREST MICHAEL STRATTON )	
Defendant. )	

#### NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M.

Graham, United States Attorney for the Northern District of
Oklahoma, Plaintiff herein, through Kathleen Bliss Adams,
Assistant United States Attorney, and hereby gives notice of its
dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure,
of this action without prejudice.

Dated this 16th day of April, 1991.

UNITED STATES OF AMERICA

TONY M. GRAHAM United States Attorney

KATHLEEN BLISS ADAMS

Assistant United States Attorney 3600 United States Courthouse Tulsa, Oklahoma 74103

(918) 581-7463

#### CERTIFICATE OF SERVICE

This is to certify that on the \_\_\_\_\_\_day of April,
1991, a true and correct copy of the foregoing was mailed,
postage prepaid thereon to:

Forrest M. Stratton 2232 N. Denver Blvd. Tulsa, Oklahoma 74106

KATHIÆEN BLISS ADAMS

Assistant United States Attorney

IN THE UNITED STATES DIST NORTHERN DISTRICT	OF OKLAHOMA TO THE ILED
	APR 1 8 1001
STEPHEN MARK GARRETT,	U.S. DISTRICT COURT
Plaintiff,	COURT
vs.	No. 88-C-590-B
ROBERT A. SILLS, et al.,	
Defendants.	

#### JUDGMENT FOR ATTORNEY FEES AND EXPENSES

Pursuant to the stipulation of the parties regarding attorney fees and expenses, the Court hereby enters judgment against the Defendant Robert A. Sills and the Defendant Board of County Commissioners of Ottawa County, and in favor of the Plaintiff, for attorney fees and expenses in the amount of Fifty-Two Thousand Four Hundred Twenty-Nine Dollars (\$52,429.00), to bear interest at the rate of 7.78% per annum and to be effective on April 15, 1991.

DATED this /6 day of April , 1991.

THOMAS R. BRETT UNITED STATES DISTRICT JUDGE

S/ THOMAS R. BRETT

WELLS FARGO CREDIT CORPORATION,

Plaintiff,

vs.

ROBERT J. ADAMS a/k/a Robert

Joe Adams; SARAI ANN ADAMS; and

UNITED STATES OF AMERICA ex rel.)

Administrator of Veterans

Affairs,

Defendants,

and

vs.

UNITED STATES OF AMERICA on behalf of the Secretary of Veterans Affairs,

Third-Party Plaintiff,

CLYDE J. MESSICK; DELTA G. MESSICK; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma,

Third-Party Defendants.

FILED

APR 1 6 1991

Jack C. Silver, Clerk U.S. DISTRICT COURT

Civil Action No. 90-C-532-B Case No. CJ 90-2406 (Tulsa County District Court)

#### JUDGMENT OF FORECLOSURE

This matter comes on for consideration this day of , 1991. The Third-Party Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Plaintiff, Wells Fargo Credit Corporation, appears by its attorney Kenneth G. Miles; the Third-Party Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis

Semler, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, Robert J. Adams a/k/a Robert Joe Adams and Sarai Ann Adams, and Third-Party Defendants, Clyde J. Messick and Delta G. Messick, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Third-Party Defendant, Clyde J.

Messick, by his attorney Clark Huey, acknowledged receipt of Summons and Third-Party Complaint on July 18, 1990; that the Plaintiff, Wells Fargo Credit Corporation, acknowledged receipt of Summons and Counterclaim on June 19, 1990; that Third-Party Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Third-Party Complaint on June 19, 1990; and that Third-Party Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Third-Party Complaint on June 19, 1990.

The Court further finds that the Defendants, Robert J.

Adams a/k/a Robert Joe Adams and Sarai Ann Adams, and ThirdParty Defendant, Delta G. Messick, were served by publishing
notice of this action in the Tulsa Daily Commerce & Legal News, a
newspaper of general circulation in Tulsa County, Oklahoma, once
a week for six (6) consecutive weeks beginning January 18, 1991,
and continuing through February 22, 1991, as more fully appears
from the verified proof of publication duly filed herein; and
that this action is one in which service by publication is
authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the
Third-Party Plaintiff does not know and with due diligence cannot

ascertain the whereabouts of the Defendants, Robert J. Adams a/k/a Robert Joe Adams and Sarai Ann Adams, and Third-Party Defendant, Delta G. Messick, and service cannot be made upon said Defendants and Third-Party Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants and Third-Party Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Robert J. Adams a/k/a Robert Joe Adams and Sarai Ann Adams, and Third-Party Defendant, Delta G. Messick. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Third-Party Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Third-Party Plaintiff, both as to subject

matter and the Defendants and Third-Party Defendant served by publication.

It appears that the Third-Party Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on July 9, 1990; that the Plaintiff, Wells Fargo Credit Corporation, filed its Answer to Counterclaim on June 25, 1990; and that the Defendants, Robert J. Adams a/k/a Robert Joe Adams and Sarai Ann Adams, and Third-Party Defendants, Clyde J. Messick and Delta G. Messick, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on August 16, 1990, Clyde J. Messick and Lois Messick filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Western District of Oklahoma, Case No. 90-05469-BH. Discharge of Joint Debtors was entered on November 28, 1990, in the United States Bankruptcy Court for the Western District of Oklahoma.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eight (8), Block One (1), DOLLIE-MAC ADDITION, an Addition to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on May 21, 1976, the Third-Party Defendants, Clyde J. Messick and Delta G. Messick,

executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$17,750.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Third-Party Defendants, Clyde J. Messick and Delta G. Messick, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated May 21, 1976, covering the above-described property. Said mortgage was recorded on May 21, 1976, in Book 4215, Page 2386, in the records of Tulsa County, Oklahoma.

The Court further finds that the Third-Party

Defendants, Clyde J. Messick and Delta G. Messick, made default

under the terms of the aforesaid note and mortgage by reason of

their failure to make the monthly installments due thereon, which

default has continued, and that by reason thereof the Third
Party Defendants, Clyde J. Messick and Delta G. Messick, are

indebted to the Third-Party Plaintiff in the principal sum of

\$16,629.96, plus interest at the rate of 9 percent per annum from

June 8, 1990 until judgment, plus interest thereafter at the

legal rate until fully paid, and the costs of this action in the

amount of \$402.81 (\$20.00 docket fees, \$0.96 fees for service of

Summons and Complaint, \$381.85 publication fees).

The Court further finds that the Plaintiff, Wells Fargo Credit Corporation, has a lien on the subject property being foreclosed in the amount of \$18,922.44, with interest accrued and accruing thereon from October 12, 1989, at the rate of 10.75 percent per annum, until paid, late charges accrued and accruing, abstracting expenses, with interest at the rate of 18.00 percent per annum from the date expended thereon, until paid, any amounts that Wells Farge has been or may be required to advance for the payment of taxes, insurance or preservation of the mortgaged property, with interest at the rate of 18.00 percent per annum from the date expended thereon, until paid, reasonable attorney fees, and all costs of this action, accrued and accruing, by virtue of a mortgage recorded on January 13, 1989 in the office of the Court Clerk of Tulsa County, Oklahoma, in Book 5161 at Page 662.

The Court further finds that the Defendants, Robert J.

Adams a/k/a Robert Joe Adams and Sarai Ann Adams, are in default
and have no right, title or interest in the subject real
property.

The Court further finds that Third-Party Defendants,
County Treasurer and Board of County Commissioners, Tulsa County,
Oklahoma, claim no right, title or interest in the subject real
property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Third-Party Plaintiff have and recover judgment in rem against the Defendants, Clyde J. Messick and Delta G. Messick, in the

principal sum of \$16,629.96, plus interest at the rate of 9
percent per annum from June 8, 1990 until judgment, plus interest
thereafter at the current legal rate of percent per annum
until paid, plus the costs of this action in the amount of
\$402.81 (\$20.00 docket fees, \$0.96 fees for service of Summons
and Complaint, \$381.85 publication fees), plus any additional
sums advanced or to be advanced or expended during this
foreclosure action by Plaintiff for taxes, insurance,
abstracting, or sums for the preservation of the subject
property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff, Wells Fargo Credit Corporation, have and recover judgment in rem against Defendants, Robert J. Adams a/k/a Robert Joe Adams and Sarai Ann Adams, in the amount of \$18,922.44, with interest accrued and accruing thereon from October 12, 1989, at the rate of 10.75 percent per annum, until paid, late charges accrued and accruing, abstracting expenses, with interest at the rate of 18.00 percent per annum from the date expended thereon, until paid, any amounts that Wells Farge has been or may be required to advance for the payment of taxes, insurance or preservation of the mortgaged property, with interest at the rate of 18.00 percent per annum from the date expended thereon, until paid, reasonable attorney fees, and all costs of this action, accrued and accruing, by virtue of a mortgage recorded on January 13, 1989 in the office of the Court Clerk of Tulsa County, Oklahoma, in Book 5161 at Page 662.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Robert J. Adams a/k/a Robert Joe Adams and Sarai Ann Adams and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

#### First:

In payment of the costs of this action accrued and accruing incurred by the Third-Party Plaintiff, including the costs of sale of said real property;

#### Second:

In payment of the judgment rendered herein in favor of the Third-Party Plaintiff, United States of America;

#### Third:

In payment of the judgment rendered herein in favor of the Plaintiff, Wells Fargo Credit Corporation.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under

and by virtue of this judgment and decree, all of the Defendants and Third-Party Defendants and all persons claiming under them since the filing of the Counterclaim, Cross-Claim, and Third-Party Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

UNITED STATES DISTRICT JUDGE

#### APPROVED:

TONY M. CRAHAM United States Attorney

DETER BERNHARDT, OBA #741

Assistant United States Attorney

3600 U.S. Courthouse Tulsa, Oklahoma 74103

(918) 5/81-7463

KENNETH G. MILES, OBA #6183

Attorney for Plaintiff,

Wells Fargo Credit Corporation

J./DENNIS SEMLER, OBA #8076 Assistant District Attorney Attorney for Defendants.

Attorney for Defendants, County Treasurer and

Board of County Commissioners,

Tulsa County, Oklahoma

Judgment of Foreclosure Civil Action No. 90-C-532-B

PB/css

FRONTIER INSURANCE AGENCY, INC.,

PLAINTIFF,

vs.

PREFERRED RISK MUTUAL INSURANCE COMPANY,

DEFENDANT.

No. 90-C-673-CFILED

APR 16 1991 /

Jack C. Silver, Clerk U.S. DISTRICT COURT

#### ORDER OF DISMISSAL

NOW, on this 6 day of one, 1991, the above-styled and numbered case comes on pursuant to the stipulation of plaintiff and defendant to dismiss, with prejudice, the above-styled and numbered cause. The Court, upon due consideration, finds that the case should be dismissed.

IT IS, THEREFORE, ORDERED that plaintiff's claims in the above-styled and numbered cause are hereby dismissed, with prejudice.

UNITED STATES DISTRICT JUDGE

BRIAN J. RAYMENT, OBA #7441 KIVELL, RAYMENT & FRANCIS 7666 East 61st, Suite 240 Tulsa, OK 74133 (918) 254-0626 ATTORNEYS FOR PLAINTIFF

FRO.ORD

### FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

	Jack C. Silver, Clerk U.S. DISTRICT COURT
Case No.	90-C-718-B

JIMMY LEE JOHNSON,

Petitioner,

V.

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#### **ORDER**

This order pertains to Petitioner's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Docket #1)<sup>1</sup> and Respondent's Response (Docket #8). The background of this matter was summarized by Magistrate Judge John Leo Wagner in his Order of August 28, 1990 (Docket #2) and is incorporated herein by reference.

Respondent alleges that the Attorney General of the State of Oklahoma should be dismissed because he is not a proper party respondent pursuant to Rule 2(a) of the Rules Governing Section 2254 Cases.<sup>2</sup>

Under Rule 2(a) of the Rules Governing Section 2254 Cases, the state officer having custody of the applicant should be named as respondent. When a habeas corpus petitioner seeks relief from state custody, he must direct his petition against those state officials holding him in restraint. Moore v. United States, 339 F.2d 448 (10th Cir. 1964).

<sup>&</sup>lt;sup>1</sup> "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

<sup>&</sup>lt;sup>2</sup> Rule 2(a), regarding applicants in present custody, reads as follows: If the applicant is presently in custody pursuant to the state judgment in question, the application shall be in the form of a petition for a writ of habeas corpus in which the state officer having custody of the applicant shall be named as respondent.

However, petitioner's pro se pleadings will be held to a less stringent standard than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972).

In <u>Spradling v. Maynard</u>, 527 F. Supp. 398, 404 (1981), the court held that the Attorney General of the State of Oklahoma is not a proper party respondent in a habeas corpus action brought by a state prisoner already in custody.<sup>3</sup> The court stated:

The Attorney General of Oklahoma is simply legal counsel for the Oklahoma Department of Corrections and its employees. He is not the custodian of any prisoner incarcerated in any Oklahoma correctional institution. In the circumstances, he could not respond to a writ of habeas corpus on behalf of a prisoner even if one was issued to him.

Id.

The court is aware that the model form for use by petitioners making § 2254 habeas corpus applications includes the state attorney general as an additional respondent. Practically speaking, the Attorney General of Oklahoma, as legal counsel for the Oklahoma Department of Corrections and its employees, benefits by receiving immediate notice of a habeas corpus action filed when named as an additional respondent. However, the court concludes that the respondent's request for dismissal of the Attorney General of the State of Oklahoma as a party respondent should be and is granted pursuant to Rule 2(a).

Respondent claims that petitioner deliberately bypassed his state court remedy of a direct appeal and should therefore be barred from asserting his claims in a federal habeas corpus proceeding. Petitioner admits that he failed to perfect an appeal in state court, but

<sup>&</sup>lt;sup>3</sup> Rule 2(b) of the Rules Governing Section 2254 Cases in the United States District Courts pertaining to applicants subject to future custody <u>requires</u> the joinder of the state Attorney General: "If the applicant is not presently in custody <u>pursuant</u> to the state judgment against which he seeks relief but may be subject to such custody in the future, the application shall be in the form of a petition for a writ of habeas corpus with an added prayer for appropriate relief against the judgment which he seeks to attack. In such a case the officer having present custody of the applicant and the attorney general of the state in which the judgment which he seeks to attack was entered shall each be named as respondents."

has offered no reason for his failure to do so. The transcript ("TR") of the proceedings on March 16, 1989, in which petitioner pled no contest to the charges shows that he was clearly informed of his right to appeal (TR 11-12). He did not appeal, and under Oklahoma law, this failure constitutes a knowing waiver of the right to an appeal, and petitioner is not entitled to an appeal out of time. Maines v. State, 597 P.2d 774 (Okla. Crim. App. 1979).

The Court of Criminal Appeals, in its Order Affirming Denial of Post-Conviction Relief dated June 13, 1990, applied a state procedural bar to Petitioner's application for post-conviction relief. The court stated that "[p]etitioner has not attempted to appeal his conviction and he has not stated sufficient reasons for his failure to do so that would allow us to grant him an appeal out of time." This failure to file a direct appeal precluded him from raising issues in state court which could have been raised in a direct appeal.

In <u>Harris v. Reed</u>, \_\_ U.S. \_\_, 109 S.Ct. 1038, \_\_ L.Ed. 2d \_\_ (1989), the Supreme Court concluded that an adequate and independent finding of procedural default by a state court reviewing a prisoner's application for post-conviction relief will bar federal habeas review of the federal habeas claim, unless the habeas petitioner can show "cause and prejudice" or that failure to consider the federal claim will result in a fundamental miscarriage of justice.

However, the claimant's procedural default precludes habeas review, like direct review, only if the last state court rendering a judgment "clearly and expressly" states that its judgment rests on a state procedural bar. The Court was curtailing reconsideration of the federal issue on federal habeas as long as the state court explicitly invoked a state

procedural bar rule as a separate basis for decision.

Here the state court clearly and expressly rested its judgment on the state procedural bar. Therefore, this court cannot review the petitioner's claims unless he can show cause and prejudice or that failure to consider the claim will result in a fundamental miscarriage of justice. Petitioner has made no attempt to show any cause for his failure to appeal. As already stated, the transcript of the proceedings in which he pled no contest to the charges shows he was informed of his right to appeal and was told his attorney would file the appeal if he so desired. He did not appeal.

Petitioner has also failed to show that failure to consider his claims will result in a miscarriage of justice. He alleges that the trial judge did not follow the law in accepting his plea, as there was no determination of his mental state and no factual basis for the plea was established. However, the transcript of the proceedings shows that the law was followed.

On March 16, 1989, the parties were in the courtroom ready for trial, on second degree burglary charges, when petitioner's attorney, Ms. Denny Johnson ("Denny"), requested a conference with the judge. The transcript shows that Denny acknowledged that a plea bargain had been struck and petitioner was waiving his right to jury trial and pleading no contest. (TR 2-3). Denny declared that petitioner was aware of his rights to confront witnesses, present his defenses, and show that he was too intoxicated to form the intent to burglarize alleged by the state. (TR 3). The state agreed to strike the second page of the information as a result of the plea, and recommended 2 seven-year consecutive sentences for the two burglary charges. (TR 4-5). Petitioner personally told the court he

knew he was waiving a preliminary hearing and trial. (TR 6). Petitioner said he was not taking drugs, alcohol, or medication and had not ever been treated for mental illness or judged mentally incompetent. (TR 7).

The court asked Denny if she had any reason to believe her client was not mentally competent to understand the proceedings and aid in his defense, and she said "No, Judge. Jimmy has had some drug rehabilitation treatment, but never any mental health treatment. It's my belief he understands all the proceedings here today." (TR 7).

Petitioner then stated that he understood the charges, desired to waive his rights and plead no contest, and that he was doing so freely and voluntarily. (TR 9-10). His answers were clear and responsive. Petitioner was told the range of punishment for the crimes. (TR 10). He then requested immediate sentencing. (TR 11). Prior to sentencing, the judge advised him of his right to appeal, and told him to contact his attorney if an appeal was desired. (TR 11-12).

A guilty plea is more than a confession of guilt; it is itself a conviction. <u>Boykin v. Alabama</u>, 395 U.S. 238 (1969). The Supreme Court explained the ramifications of a guilty plea in <u>McCarthy v. United States</u>, 394 U.S. 459, 466 (1969).

... A defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be 'an intentional relinquishment or abandonment of a known right or privilege.' Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. (Citation omitted).

The Supreme Court's standards for determining the validity of a guilty plea are embodied in Rule 11 of the Federal Rules of Criminal Procedure. In <u>King v. State</u>, 553

P.2d 530 (Okla. Crim. App. 1976), the Oklahoma Court of Criminal Appeals prescribed the procedure to be used by Oklahoma trial courts for acceptance of guilty pleas. This procedure is substantially similar to that set forth in Federal Rule of Criminal Procedure Rule 11(c).

Under the standards of Rule 11(c) and <u>King v. State</u>, the court finds no basis for the petitioner's claim that the state court "failed to insure that an adequate/appropriate interrogation was made as to the defendant's past and present mental state as required by law." In <u>King v. State</u>, the court stated: "the trial court must first determine if the defendant is competent by interrogation of defense counsel and the defendant as to the defendant's past and present mental state as well as by observation of the defendant." Judge Beasley had the opportunity at the plea hearing to observe petitioner closely and to question him at length. Petitioner's answers were clear and responsive.

In addition, absence of a "factual basis" statement by a prisoner upon a plea of guilty does not provide an independent ground for invalidating the plea. Sena v. Romero, 617 F.2d 579, 581 (10th Cir. 1980); Freeman v. Page, 443 F.2d 493, 497 (10th Cir. 1972), cert. den., 404 U.S. 1001 (1971). An exception to this rule exists if the criminal defendant proclaims his innocence during the plea, upon the record, when entering the plea of guilty. Sena v. Romero, citing North Carolina v. Alford, 400 U.S. 25, 38 n.10 (1970). In the case at bar petitioner did not allege his innocence at his plea proceeding.

Petitioner's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 should be and is denied.

Dated this day of April, 1991.

THOMÁS R. BRETT

UNITED STATES DISTRICT JUDGE

FILED

# IN THE UNITED STATES DISTRICT COURT FOR THE APR 15 1991 NORTHERN DISTRICT OF OKLAHOMA

JACK C. SILVER, CLERK U.S. DISTRICT COURT

NATALIE JOHNSON, by and through Fred and Jennifer Johnson, her father and mother, as next friends,	) ) )		
Plaintiffs,	)		
vs.	)	No.	88-C-340-C
INDEPENDENT SCHOOL DISTRICT NO. 4 OF BIXBY, TULSA COUNTY, OKLAHOMA, et al.,	) ) )		
Defendants.	)		

#### ORDER

Before the Court is the motion of defendant Independent School District No. 4 of Bixby, Tulsa County, Oklahoma, for reconsideration.

By Order of March 29, 1991, the Court denied defendant's motion for stay pending review on certiorari. 28 U.S.C. §2101(f), the statute relied upon, provides in pertinent part as follows:

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, ....

(emphasis added).



The Tenth Circuit Court of Appeals delivered its opinion on December 11, 1990, and issued its mandate on January 2, 1991, remanding the case for further proceedings. On March 11, 1991, the defendant filed its petition for writ of certiorari with the United States Supreme Court. Defendant filed its motion to stay in this Court on March 15, 1991. The Court denied the motion based upon lack of jurisdiction.

Essentially, defendant's argument is as follows:

The School District acknowledges that the Tenth Circuit would have been the proper forum to hear a motion for stay <u>prior</u> to issuance of the mandate pursuant to Federal Rule of Appellate Procedure 41(b). After issuance of the mandate, however, the district court regained jurisdiction of the case. Long-standing precedents in other federal courts of appeals and in trial courts establish that a district court has authority to hear a motion for stay pending application for writ of certiorari.

(Defendant's Brief at 5).

Thus, defendant's position is that delay in filing a §2101(f) motion alters the statutory language. The Court disagrees. This very point was addressed in <u>In re Stumes</u>, 681 F.2d 524 (8th Cir. 1982):

It appears, therefore, that only a judge of this Court, or a justice of the Supreme Court, is empowered by 28 U.S.C. Section 2101(f) to stay the execution or enforcement of this Court's judgment. Respondent Solem could have applied to this Court for a stay of its mandate, but he did not do so, and this Court's mandate issued on April 23, 1982.

ld. at 525.

To the extent that <u>Hovater v. Equifax Services</u>, <u>Inc.</u>, 669 F.Supp. 392 (N.D.Ala. 1987) suggests that whether a district court may issue a stay pursuant to §2101(f) depends upon the nature of the mandate, this Court declines to follow it.

It is the Order of the Court that the motion of defendant Independent School District No. 4 of Bixby to reconsider is hereby DENIED.

IT IS SO ORDERED this \_\_\_\_\_\_\_ day of April, 1991.

Chief Judge, U. S. District Court

Work

			G P <sub>app</sub> ®
FRANK and	KELLY ABAGNALE,		APR 15 1991
	Plaintiff,		JACK C. SEVER CLERK U.S. DISTRICT COURT
v.	ý	No. 90-C-708-E	S.S. DISTRICT COURT
BRAUN A/G	and BRAUN, INC.,		
	Defendant. )		

#### RULE 41 STIPULATION OF DISMISSAL WITHOUT PREJUDICE

The Plaintiffs and the Defendant, through their respective counsel and pursuant to Rule 41(a)(1) stipulate to the dismissal of the above styled and numbered cause of action without prejudice.

DATED this day of April, 1991.

> Gerard F. Belz, Jr. Cozen and O'Connor The Atrium, Third Floor 1900 Market Street Philadelphia, PA 19103

> > -and-

FELDMAN, HALL, FRANDEN, WOODARD & FARRIS 525 South Main, Suite 1400 Tulsa, OK 74103 4409 918/583-7129

John R. Woodard, III, #9853

ATTORNEYS FOR PLAINTIFFS

PRAY, WALKER, JACKMAN, WILLIAMSON & MARLAR

900 Oneok Plaza

Tulsa, OK 74103 918/584-4136

J. Warren Jackman,

ATTORNEYS FOR DEFENDANTS

PHILLIP LEE HULL, a minor, )
by his natural parents, )
guardians and personal )
representatives, PHILLIP GENE )
HULL AND TANYA LEE HULL, )
husband and wife, and PHILLIP )
GENE HULL, Individually, and )
TANYA LEE HULL, Individually, )

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

FILED

APR 13 1991

Jack C. Silver, Clerk U.S. DISTRICT COURT

No. 88-C-1645-E

# AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this \_\_\_\_\_ day of April, 1991 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that this case was tried to the Court without a jury April 2 through April 13, 1990. Upon consideration of all the evidence in the record, arguments of counsel and controlling statutory and case law, the Court enters its Findings of Fact and Conclusions of Law.

1. This is a civil action brought by Phillip Lee Hull, a minor, by his natural parents, guardians and personal representatives, Phillip Gene Hull and Tanya Lee Hull, husband and wife, on his behalf and on their own behalves against the Defendant, United States of America, under the terms and provisions of the Federal Tort Claims Act.

- The action is one for monetary damages by reason of negligence.
- 2. All Plaintiffs at the time of the events complained of were and are now residents of the Northern District of Oklahoma. The medical malpractice charged against the United States occurred at the Claremore Indian Hospital, Rogers County, within the Northern District of Oklahoma. Claremore Indian Hospital is owned and operated by the United States of America through the Indian Health Service of the Public Health Service of the U.S. Department of Health and Human Services.
- 3. Administrative claims were submitted by Plaintiffs to the U.S. Public Health Service on January 28, 1988. The parents claimed, in their individual capacity, damages of \$7.5 million each and on behalf of their son, a minor, Phillip Lee Hull, damages in the amount of \$15 million. There was no final administrative determination made by Defendant during the statutory six month period. Plaintiffs filed this civil action on December 22, 1988.
- 4. On December 5, 1989 the Defendant filed an admission of liability which left the amount of damages to be awarded to Plaintiffs as the only remaining issue for trial.
- 5. The admitted negligence of the Defendant directly caused the following injuries to the Plaintiff Phillip Lee Hull: severe hypoxic ischemic encephalopathy, cerebral palsy, with spastic quadriplegia, and developmental delay.

- 6. Based upon the Defendant's negligence, Plaintiffs claim the following damages:
  - A. Phillip Lee Hull: economic losses, including lost wages, lost earning capacity, costs of medical treatment and costs of special housing and transportation; and non-economic losses consisting of loss of enjoyment of life, mental and physical pain, suffering and disfigurement, past, present and future, as well as permanent disability.
  - B. Each of the parents claims loss of household services of the minor, and loss or impairment of the aid, comfort, society and companionship of the minor.
- 7. Plaintiffs Tanya Lee Hull and Phillip Gene Hull were married on August 28, 1986. Their respective ages were 19 and 24.
- 8. Tanya Lee Hull received her prenatal care through the Indian Health Services. Phillip Lee Hull was born at Claremore Indian Hospital on June 28, 1987.
- 9. Plaintiff Tanya Lee Hull received injuries in the delivery of Phillip Lee Hull by reason of the negligence of the United States.
- 10. Plaintiff Phillip Gene Hull was present during the birth of his son and immediately thereafter.
- 11. Plaintiff Phillip Lee Hull is a white male having a life expectancy of 69.8 years from the time of the trial.

This finding is based upon the totality of the expert testimony in the case. The most compelling and persuasive evidence is that Plaintiff, Phillip Lee Hull, will experience a full life expectancy.

- 12. By reason of the negligence of the Defendant, Phillip Lee Hull will require extraordinary medical services and support. The Court determined that the following expenses are to be reasonable and necessary without regard to any potential increase in the cost of the services to be rendered in the future, custom housing which will be necessitated in the future when Phillip Lee Hull reaches that point in his development when he can use an adaptive wheel chair, replacement wheelchairs, and replacement customized vans throughout the life time of Phillip Lee Hull so long as he is not institutionalized:
  - A. Physical Therapy:
    - a) Until age 21 1 hour, 3 x per week at \$75.00 per hour; \$225 per week x 52 = \$11,700 per year x 18 years = \$210,600 16 weeks (\$3,600) = \$207,000.00
    - (b) Age 21 to 45 1 hour, 1 x week at \$75.00 per
      hour; \$75 x 52 = \$3,900 per year x 24 years =
      \$93,600
      \$93,600.00
    - (c) Age 45 to 69.8 1 hour, 2 x per week at

\$75.00 per hour; \$150 x 52 = \$7,800 per year x 24.8 years = \$193,440 \$193,440.00 Physical Therapy Total = \$494,040.00

- B. Occupational Therapy:
  - (a) Until age 21 (see Physical Therapy (a)
     above) =

### \$207,000.00

(b) Age 21 to 45 - (see Physical Therapy (b) above) =

### \$ 93,600.00

- (c) Age 45 to 69.8 (see Physical Therapy (c)
  above) = \$193,440.00

  Occupational Therapy Total = \$494,040.00
- C. Speech Therapy:
  - (a) Until age 21 (see Physical Therapy (a)
     above) =

### \$207,040.00

(b) Age 21 to 45 - (see Physical Therapy (b) above) =

### \$ 93,600.00

- (c) Age 45 to 69.8 (see Physical Therapy (c)
  above) = \$193,440.00

  Speech Therapy Total = \$494,040.00
- D. Nursing: 6 hours per month at \$50.00 per hour =

\$300 per month = \$3,600 per year; To age 4 = \$2,400 [8 months]; From 69 to 69.8 [\$3,600 x .8] = \$2,880; From 4 to 69 = 65 x \$3,600 = \$234,000 + \$2,400 + \$2,880 =

### Nursing Total =

\$239,280.00

#### E. Nutritionist:

- (a) Until age 21 52 hours per year at \$40.00 per
  hour = \$2,080 per year; To age 4 = 36 weeks x
  40 = \$1,440; 17 years at \$2,080 = \$35,360 +
  \$1,440 = \$36,800;
- (b) Age 21 to 69.8 12 hours per year at \$40.00 per hour = \$480 per year; From 21 to 69 = 48 x \$480 = \$23,040; From 69 to 69.8 = \$384 + \$23,040 = \$23,424;

### Nutritionist Total =

\$60,224.00

The Court does not find compelling evidence that would justify a finding of need for psychological services for Lee, his mother or father, and therefore declines to make a finding of such being medically necessary.

- F. Case Management: \$200,000.00 to last over the course of Lee's lifetime.
- G. Physicians and Hospitals:
  - (a) Pediatrician 8 visits per year at \$80.00 per visit = \$640 per year; To age 4 = 8 months/12

months = .67 x \$640 = \$428.80; To age 69 = 65 x \$640 = \$41,600; To age 69.8 = .8 x \$640 = \$512 + \$41,600 + \$428.80 = \$42,540.80

(b) Orthopedic Consultation - 3.5 visits per year at \$87.50 per visit = \$306.25 per year; To age 4 = .67 x \$306.25 = \$205.19; To age 69 = 65 x \$306.25 = \$19,906.25; To age 69.8 = .8 x \$306.25 = \$245 + \$19,906.25 + \$205.19 =

### \$ 20,356.44

- (c) Inpatient Hospitalizations \$500,000.00 to last over the course of Lee's lifetime.
- (d) Ophthalmological \$200.00 per year; To age 4 = \$200 x .67 = \$134; To age  $69 = 65 \times $200 = $13,000$ ; To age  $69.8 = .8 \times $200 = $160 = $13,000$

### \$ 13,294.00

(e) Medication - \$30.00 per month for the rest of
his life = \$360 per year; To age 4 = \$30 x 8 =
\$240; To age 69 = 65 x \$360 = \$23,400; To age
69.8 = .8 x \$360 = \$288 =

### \$ 23,928.00

(f) Inpatient Physician Expenses based on a
 calculation of \$187.50 per year; To age 4 =
 .67 x \$187.50 = \$125.63; To age 69 = 65 x
 \$187.50 = \$12,187.50; To age 69.8 = .8 x
 \$187.50 = \$150 =

### \$ 12,463.13

- H. Therapy Aide: \$2,121,790.00 to last over the course of Lee's lifetime;
- I. Fund Management: \$784,717.50 to last over the course of Lee's lifetime;
- J. Therapeutic Equipment, computers and switches: \$661,933.00 to last over the course of Lee's lifetime;
- K. Adaptive wheelchair: \$22,167.00;
- L. Customized vehicle and periodic equipment: \$79,530.00 for van; \$48,246.00 for van maintenance.
- M. Lost Wages and impairment of earning capacity in the amount of \$1,601,474.00.
- N. Plaintiffs have established through competent evidence that because of Defendant's negligence they have suffered and are entitled to money damages for pain and suffering in the following amounts:

Lee Hull \$250,000.00

Tanya Hull \$150,000.00

Phillip Hull \$100,000.00

Paragraphs A through N above establish that Plaintiff Phillip Lee Hull's damages amount to \$8,164,063.87, with Tanya Hull's damages of \$150,000.00 and Phillip Hull's damages of \$100,000.00. Interest must be calculated upon the entire sum of \$8,414,063.87 at the rate of 6.26% per annum from October 19, 1990 to date of

deposit. The total of Phillip Lee Hull's damages of \$8,164,063.87 plus interest as delineated above, less attorney fees to be paid, the Court orders to be placed in its entirety in an irrevocable trust. The Trust shall contain a possibility of reverting in favor of the United States of America for the reasons and subject to the conditions stated herein. This amount irrevocably placed in trust for the lifetime of Phillip Lee Hull together with all future interest earned on that amount or any portion of that amount by the Trust represents the net portion of the total damages awarded to provide for the care and support of Phillip Lee Hull.

The amounts designated for Tanya and Phillip Hull may be paid to them via the channels normally designated for successful plaintiffs in personal injury actions. The Court finds that the sums payable to Lee Hull, however, must be placed in the Trust fund on behalf of Lee Hull.

The Court finds from the evidence that Phillip Lee Hull can obtain his maximum development potential in a home environment supplied by his mother and father. The Court further finds that institutionalization of Phillip Lee Hull is not in his best interest from both a physical and intellectual developmental basis. Accordingly, the Court has determined that it should take all steps which it may, pursuant to the law, to encourage the parents of

Phillip Lee Hull to maintain and nurture him in a family home environment. The Court is mindful of the fact that this will be a difficult undertaking on the part of the parents of Phillip Lee Hull. The Court further realizes that the parents may determine at some point in the future that they are not able, either physically, mentally or emotionally, to cope with the stress occasioned by maintaining Phillip Lee Hull in a home environment and may be forced to cause Phillip Lee Hull to be institutionalized. Knowing this, the Court has determined that all sums to be awarded Phillip Lee Hull shall be placed in an irrevocable trust, with a possibility of reverting in favor of the United States of America, on behalf of and for the care, support, and maintenance of Phillip Lee Hull and to encourage the continuation of an in-home environment for Phillip Lee Hull. The parties have prepared and the Court contemporaneously approves a Trust Agreement which, among other things, provides as follows:

A. The purpose of this Trust is to provide medical services, care, support, adaptive wheel chairs, customized motor vehicles, customized housing and to the extent possible, to maximize the mental and physical development and welfare of Phillip Lee Hull. To this end, the Trustee may make such payments for the benefit of Tanya Lee Hull and

Phillip Gene Hull for their health, support maintenance and welfare, as long as Tanya Lee Hull and/or Phillip Gene Hull are providing Phillip Lee Hull with a home environment, as the Trustee deems necessary for the benefit of Phillip Lee Hull. The Trustee shall not make any payments to or supply any benefit for Tanya Lee Hull and/or Phillip Gene Hull except as the Trustee in its sole discretion deems necessary for the benefit of Phillip Lee Hull.

- B. The sum of \$8,164,063.87 plus interest calculated at 6.26% per annum from October 19, 1990 to date of deposit paid by the United States of America to the Trustee pursuant to the Order and Judgment of the Court, less sums paid in attorney fees, shall constitute the "Trust Estate" and shall be referred to herein as the "Trust Estate". The "Trust Estate" shall remain in existence until the death of Phillip Lee Hull.
- C. The "Trust Estate" represents damages on account of personal injuries. This Trust is not a taxable entity. Neither the Trust nor any person including Phillip Lee Hull is in constructive receipt of the original principal and all interest earned on that original principal. Neither the Trust nor any person has the current economic benefit of the

- "Trust Estate" from the date of inception or during the lifetime of Phillip Lee Hull.
- D. Because this Trust is not a taxable entity and the "Trust Estate" may possibly revert to the United States of America, neither the Trust nor any other person or entity may take or claim any Section 213 of the Internal Revenue Code medical deduction for any taxable year for any Section 213 medical expenses which are paid from the "Trust Estate".
- E. The Trustee shall during the lifetime of Phillip
  Lee Hull, subject to the terms and conditions of
  this Trust, in its absolute discretion, pay so much
  of the "Trust Estate" for the benefit of Phillip
  Lee Hull as the Trustee in its absolute discretion
  may deem appropriate.
- F. In the exercise of its discretion, the Trustee will consider the Court's Amended Findings of Fact and Conclusions of Law. A copy of the Court's Amended Findings of Fact and Conclusions of Law is attached to and made a part of the Trust Agreement.
- G. The Trustee is not required to furnish the specific extraordinary medical services and supports detailed in the Court's Order if the Trustee, in its discretion, determines that such medical services and supports may be performed by Phillip Lee Hull's mother and/or father or third parties after completion of necessary training, at

lesser or more expensive hourly rates. The Trustee may use the Court's Order to anticipate some of the needs which may arise because of Phillip Lee Hull's physical condition. However, the Trustee will be guided in the exercise of its discretion by the fact that this "Trust Estate" is for the benefit of Phillip Lee Hull. The Trustee shall do nothing to deliberately try to conserve any portion of this "Trust Estate" for any third person.

- The Trustee may employ a case management-type consultant н. to assist the Trustee in its administration of this Trust. Phillip Gene Hull and/or Tanya Lee Hull shall satisfy themselves as to the reasonableness and the necessity of all treatment recommended by the Trustee and consultant and agree that upon making that determination, they will sign any consent for treatment required by the provider of that treatment. Phillip Gene Hull and Tanya Lee Hull agree to meet with the Trustee and/or its consultant in their home to allow the Trustee and its consultant reasonable access to Phillip Lee Hull. Phillip Gene Hull and Tanya Lee Hull further agree to advise the Trustee and its consultant of any substantial change in the condition of Phillip Lee Hull upon the occurrence of change of conditions.
- I. This Trust shall terminate upon the death of Phillip Lee
  Hull. Upon the death of Phillip Lee Hull the Trustee
  shall pay all the outstanding obligations of the Trust

and distribute the remaining "Trust Estate" in the following manner:

- (1) If Phillip Lee Hull has not been institutionalized, but is living in a home environment provided for and occupied by his father, Phillip Gene Hull, and/or mother Tanya Lee Hull, and he is survived by his father, Phillip Gene Hull, and his mother, Tanya Lee Hull, Trustee shall distribute to each parent one-half of the then remaining "Trust Estate". If one parent is deceased, Trustee shall distribute to the sole surviving parent all of the then remaining "Trust Estate".
- If Phillip Lee Hull is survived by his father, (2) Phillip Gene Hull, and his mother, Tanya Lee Hull, and has been institutionalized, that percentage of the remaining "Trust Estate" on the date of death of Phillip Lee Hull arrived at by dividing Phillip Lee Hull's age the date of his institutionalization by 69.8, that being his life expectancy on the date of trial, distributed by the Trustee, one-half to Phillip Lee Hull's mother, Tanya Lee Hull, and one-half to Phillip Lee Hull's father, Phillip Gene Hull. Ιf one parent is deceased, this entire percentage of the "Trust Estate" shall be distributed by the Trustee to the sole surviving parent. The

remaining percentage of the "Trust Estate" shall revert to the United States of America and shall be distributed to the United States of America by the Trustee.

- (3) If Phillip Lee Hull is not survived by a parent and has not been institutionalized, the entire "Trust Estate" shall be distributed pursuant to the terms and conditions of the Last Will and Testament of Phillip Lee Hull. If Phillip Lee Hull should die intestate the entire "Trust Estate" shall be distributed to his heirs pursuant to the laws of descent and distribution of the State of Oklahoma.
- If Phillip Lee Hull is not survived by a parent and (4) has been institutionalized, that percentage of the remaining "Trust Estate" arrived at by dividing Phillip Lee Hull's age on the date of institutionalization by 69.8, that being his life expectancy on the date of trial, shall distributed by the Trustee pursuant to the terms and conditions of the Last Will and Testament of Phillip Lee Hull or to his heirs pursuant to the laws of descent and distribution of the State of Oklahoma if he should die intestate. The remaining percentage of the "Trust Estate" shall revert to United States of America and shall the distributed to the United States of America by the

Trustee.

- J. If Phillip Lee Hull is survived by one or both parents, the distribution from the "Trust Estate" shall be the final distribution of the damages awarded by the Court to the family and shall not be income to the family or subject to estate taxes. If Phillip Lee Hull is not survived by a parent, that distribution will be a distribution of Phillip Lee Hull's estate assets subject to estate taxes.
- K. No person is entitled to any fixed indefeasible future interest in the "Trust Estate". No party shall have any power to anticipate, assign, transfer, sell, encumber, or otherwise dispose of any interest in whole or in part in and to the "Trust Estate". The interest of Phillip Lee Hull shall not be subject to any claim of any creditor of any person except such debt as may have been incurred by the Trustee of this Trust.
- L. The Trustee is specifically authorized to purchase, in the name of the Trust, a suitable home to allow for the in-home care of Phillip Lee Hull. The Trustee is further authorized to pay all expenses incidental to the maintenance of that home including insurance, utilities and taxes.
- M. The Trustee is specifically authorized to purchase, in the name of the Trust or in the name of others in the discretion of the Trustee, any vehicle which it deems

necessary and to pay all expenses incidental thereto.

The Trustee is specifically authorized to maintain insurance, including liability coverage, on that vehicle.

- N. The Trustee is authorized to maintain any insurance that it deems necessary for the benefit or interest of Phillip Lee Hull except for life insurance. The Trustee is not authorized to purchase life insurance on the life of Phillip Lee Hull.
- o. The Trustee shall have the right to sell items purchased in the name of the Trust, on such terms and conditions as the Trustee, in its sole discretion may determine to be in the best interest of the "Trust Estate". The Trustee may deliver good title to any purchaser for value without inquiry of the purchaser as to the use of the proceeds from that sale.
- P. Other than as specifically provided by this Trust Agreement, the Trustee is authorized to invest the "Trust Estate" only in direct obligations issued by the United States Treasury such as Treasury Bills, Notes, or Bonds. The Trustee is permitted to maintain saving and checking accounts at normal rates of interest, which together shall not total more than \$100,000.00 on any given date.
- Q. Any successor of or to the Trustee shall succeed the Trustee herein, whether through sale or transfer of the Trustee's business or its Trust Department, merger with another entity, resignation of the Trustee, or by

appointment. The successor Trustee shall possess the powers and be governed by the terms and conditions of this Trust to the same extent and to the same effect as if that successor Trustee were the original named Trustee of this "Trust Estate". If the Trustee resigns or the permanent residence of Phillip Lee Hull is moved to a location more than 120 miles from Tulsa, Oklahoma, the Honorable James O. Ellison, United States District Judge for the Northern District of Oklahoma or his successor to that office, shall have the power to appoint the successor Trustee and shall also have the right to change the method of compensating the Trustee with the agreement The successor Trustee must be a of the Trustee. corporate Trustee with assets under management in an amount not less than the amount of assets under management by Trustee on the date of that appointment.

- R. Except as limited by this Trust Document, the Trustee shall possess those powers set forth in Title 60, Section 175.24 of the Oklahoma Statutes. The Trustee shall be entitled to reasonable compensation based upon a reasonable hourly rate for the hours reasonably expended in performing the duties of Trustee. The Trustee shall not be entitled to be compensated on a percentage basis based upon the size of the Trust.
- S. Phillip Gene Hull and/or Tanya Lee Hull specifically agree that the Honorable James O. Ellison, United States

District Judge for the Northern District of Oklahoma or his successor to that office, shall retain limited jurisdiction in this case. Such limited jurisdiction shall be to possess those powers specified in this Trust Agreement as follows:

- (1) Phillip Gene Hull and/or Tanya Lee Hull shall allow the Court, at its request, to visit with Phillip Lee Hull in their residence.
- (2) Phillip Gene Hull and/or Tanya Lee Hull further agree that in the event of a disagreement between the Hulls and the Trustee as to the care that Phillip Lee Hull is receiving or is recommended to receive, and resolution of that disagreement cannot be obtained, such disagreement will be submitted to the Court for the Court's decision. Both the parents and the Trustee agree to be bound by the Court's decision.
- (3) Phillip Gene Hull and Tanya Lee Hull and the Trustee specifically agree that the Court retains the power to remove the Trustee, for cause, upon the Court's own initiative or upon a proper showing by the parents.
- (4) Phillip Gene Hull and Tanya Lee Hull and the Trustee further agree that the Trustee shall render an annual accounting to the Court of the financial condition of the Trust.

- (5) An annual Trustee's report shall be furnished to the Court concerning the overall status of Phillip Lee Hull. The Court may specify from time to time the content of this required report.
- (6) The parties further agree that in the event that any situation arises that the Trustee and/or the parents do not feel is adequately covered by the Trust document, either of these parties may ask the Court for clarification or directions. The parties do not intend this provision to establish in the Court any on-going or continuing discretion in the day-to-day management of the Trust. Discretion in the day-to-day management of the Trust has been vested in the Trustee selected by the Court.
- on that lump sum based upon investments only in direct obligations of the United States Treasury which will not allow for potential speculative growth to the "Trust Estate", but does provide for a certainty in amount of the total damage award. This award carries with it an inherent risk of undercompensation. The expenses incurred may well exceed those contemplated by the Order of the Court and Phillip Lee Hull may live beyond his normal life expectancy. The financial consequences of the death of Phillip Lee Hull prior to the consumption of the "Trust Estate" would not, therefore, be a financial

windfall to the parents of Phillip Lee Hull if they survive the death of Phillip Lee Hull, since they have assumed the substantial risk of having to cover the expenses of Phillip Lee Hull if he outlived the amount available pursuant to this damage award. Further, any sums remaining in the "Trust Estate" at the death of Phillip Lee Hull would certainly be enhanced to the extent that Phillip Lee Hull's father, Phillip Gene Hull, and mother, Tanya Lee Hull, personally performed services for the benefit of Phillip Lee Hull during his lifetime. If Phillip Lee Hull is institutionalized, however, a potential windfall would be realized by the father, Phillip Gene Hull, and mother, Tanya Lee Hull, of Phillip Lee Hull in the event of his death during their lifetime because of a differential in the cost of institutional care as opposed to home care and further as a result of the potential reduced life expectancy as the result of that institutionalization. As used herein and as to be used in the Trust Document, institutional means any custodial arrangement outside the home. The Trust shall provide that the Trustee distribute the "Trust Estate" upon the death of Phillip Lee Hull in the manner described supra.

14. The Court further finds that if Phillip Lee Hull is survived by parents, the distribution from the "Trust Estate" shall be the final distribution of the damages

awarded by the Court to the family and shall not be income to the family or subject to estate taxes. If Phillip Lee Hull is not survived by a parent, then in that event the amount distributed upon the death of Phillip Lee Hull which could be subject to his will and which would be his estate would not be a distribution of the damages award, that distribution would be Phillip Lee Hull's estate asset subject to estate taxes.

- 15. The Trustee shall render an annual accounting to the mother, Tanya Lee Hull, and/or father, Phillip Gene Hull, of Phillip Lee Hull and to Phillip Lee Hull upon his obtaining his majority. If it is determined upon his obtaining majority that Phillip Lee Hull is not competent, the Trustee shall furnish the annual accounting to Phillip Lee Hull's next of kin on behalf of Phillip Lee Hull.
- 16. The Trustee to be empowered by the Trust Origination Documents has been approved by the Court and is designated as Fourth National Bank of Tulsa. The Trustee shall retain one-half of the total award and shall deliver one-fourth of the total award to F & M Bank and Trust Company and one-fourth of the total award to Bank of Oklahoma, N.A. Those Banks will serve as agents for the Trustee and will invest all of those funds in direct obligations issued by the United States Treasury such as Treasury Bill, Notes, or Bonds. Each of those Banks

shall render such accountings as requested by the Trustee for annual inclusion within the Trustee's report to the Court.

The Trustee from the original one-half of the Trust Estate which it retains shall pay all attorneys' fees which are due and payable to Stephen C. Wolfe, all Plaintiffs' costs and expenses and shall further reimburse Stephen Wolfe for any and all expenses advanced by Stephen Wolfe to or for the benefit of Phillip Lee Hull. After those payments are made, the Trustee shall cause all future and necessary expenditures to be made from the total assets of the Trust in such a manner that the amount of money held by the Trustee, F & M Bank and Trust Company and Bank of Oklahoma, N.A. shall be reasonably equal in value, adjustments to be made at least bi-annually, each possessing approximately one-third of the total value of the Trust Estate.

The Trustee shall from the Trust Estate cause the reasonable fees on an hourly basis to be paid to F & M Bank and Trust Company and Bank of Oklahoma, N.A. for the services they render as repository agents for the Trustee in this regard.

Although the Court is firmly convinced that a structured settlement would be in the best interests of both parties, under the prevailing law, the Court cannot order such a settlement. The Trust will not be reversionary in

the event of Lee Hull's early and untimely death, but is directed by the Court to revert to the United States Lee ever institutional be placed in an should environment. This reversion is to be calculated by subtracting from the total Trust Estate remaining at the institutionalization, the cost of time of institutional care from that year until he reaches the For example, should Lee be age of 69.8 years. institutionalized at the age of 20, the reversion would be calculated by subtracting from the total Trust Estate the cost of institutional care for 49.8 years. <u>See</u> Reilly v. United States, 665 F. Supp. 976 (D.R.I. 1987).

The amended judgment rendered herein does not alter the 17. amount delineated by the Court in its original judgment of October 19, 1990. From that date the total amount of damages has been fixed, certain and final, and was accordingly filed of record with the United States Government Accounting Office by Plaintiff's counsel on October 23, 1990. Therefore, the Court orders that interest should be paid on the total damage award in the amount of 6.26% from October 23, 1990 to date of deposit by Defendant. See Federal Deposit Ins. Corp. v. Rocket Oil Co., 865 F.2d 1158 (10th Cir. 1989); United States v. 85.11 Acres of Land, Etc., 243 F.Supp. 423 (N.D. Okla. 1965); Tune v. Peabody Coal Co., 772 P.2d 927 (Okl. App. 1989); Nunn v. Stewart, 756 P.2d 6 (Okl. 1988).

18. The Court orders that the amount of attorneys' fees contractually required by the arrangements between Plaintiffs and their counsel be paid from the total damage award. Plaintiffs' counsel are directed to pay from that sum the fees and costs expended by Plaintiffs' trust expert at the hearing. The attorney fees for the Guardian Ad Litem and the fees and costs for the Guardian Ad Litem's trust expert are to be paid by the Defendant.

IT IS THEREFORE ORDERED that, liability having been admitted by Defendant United States of America, total recovery by Plaintiffs Lee Hull, Tanya Hull and Phillip Hull is \$8,414,063.87 as set forth The amounts designated for Tanya and Phillip Hull may be paid to them via the channels normally designated for successful plaintiffs in personal injury actions. The Court finds that the sums payable to Lee Hull, however, must be placed in a trust fund on behalf of Lee Hull. The Trustee to be empowered by the Trust Origination Documents has been approved by the Court and is delineated as Fourth National Bank of Tulsa, with F & M Bank and Trust Company and Bank of Oklahoma, N.A. as agents as specified, The Trust will not be reversionary in the event of Lee Hull's early and untimely death, but is directed by the Court to revert to the United States via the formula indicated should Lee ever be placed in an institutional environment. The amended judgment rendered herein does not alter the amount delineated by the Court in its original judgment of October 19, 1990. From that date the total amount of damages has been fixed, certain and final,

and was accordingly filed of record with the United States Government Accounting Office by Plaintiff's counsel on October 23, 1990. Therefore, the Court orders that interest should be paid on the total damage award in the amount of 6.26% from October 23, 1990 to date of deposit by Defendant. The Court orders that the amount of attorneys' fees contractually required by the arrangements between Plaintiffs and their counsel be paid from the total damage award. Plaintiffs' counsel are directed to pay from that sum the fees and costs expended by Plaintiffs' trust expert at the hearing. The attorney fees for the Guardian Ad Litem and the fees and costs for the Guardian Ad Litem's trust expert are to be paid by the Defendant.

ORDERED this \_\_// day of April, 1991.

S/ JAMES O. ELLISON

JAMES O. ELLISON UNITED STATES DISTRICT JUDGE NORTHERN DISTRICT OF OKLAHOMA

### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

			K	ECEIVED	,
LUCILLE F. RAME,		) )	А	PR 1 2 1991	8
	Plaintiff,	)	JACK (	SILVER, CL DISTRICT COU	ERK
v.		)	90-C-968-B <sup>U.S</sup>	ISTRICT COU	RT
DAVID ALLEN BOX, et al,		)	•	"IL	<b>&gt;</b>
	Defendants.	)	USACK	APR 12 1991	D
ORDER CONVE	RTING SECTIO	<u>N 1983 AC</u>	TION TO PETIPION	GOR ON	
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Considering the Motion to Dismiss of Defendants David Allen Box, Terry McLique, David Poplin, William Whistler, et al (docket #5)<sup>1</sup>, the United States Magistrate Judge has reviewed the allegations of Plaintiff Lucille Rame's complaint. Plaintiff filed this action as a civil rights complaint pursuant to Title 42 U.S.C. §1983. However, because the Plaintiff is challenging the fact and duration of her confinement and is seeking immediate or early release the United States Magistrate Judge finds that the Complaint is more properly construed and considered as an Application for a Writ of Habeas Corpus under 28 U.S.C. §2254. In *Preiser v. Rodriguez*, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973), the court held that "when a state prisoner is challenging the fact or duration of his physical imprisonment and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment his sole federal remedy is a writ of habeas corpus."

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<sup>&</sup>lt;sup>1</sup> "Docket numbers" refer to numerical designations assigned sequentially to each pleading motion or order or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

From Plaintiff's <u>Complaint</u>, it appears that she is incarcerated for committing first degree murder. Plaintiff contends that the state knowingly used perjured testimony to provide the basis for her conviction. Plaintiff further claims that as a result of this perjured testimony she is unlawfully imprisoned and should be granted immediate release or a new hearing. Plaintiff does not seek monetary damages from Defendants.

Because the Plaintiff seeks only release from imprisonment this action is not cognizable under 42 U.S.C. §1983. Section 1983 is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life but not to the fact or length of his custody. *Preiser v. Rodriguez*, 411 U.S. 475, 499. Accordingly, Defendants Poplin, Whistler, Box and McBride are hereby dismissed from this action.

This <u>Complaint</u> shall be considered as a <u>Petition for Writ of Habeas Corpus</u> naming as Respondent the Warden of Eddie Warrior Correction Center.

The Clerk of Court is directed to mail a copy of this Order as well as a copy of the

Complaint/Petition to Respondent.

SO ORDERED THIS

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1991.

JEFFLEY S. WOLFE

UNITED STATES MAGISTRATE JUDGE

RCH/sc 04/08/91

## FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

APR 12 1991

MAXINE WRIGHT,

Jack C. Silver, Clerk U.S. DISTRICT COURT

Plaintiff,

vs.

Case No. 90-C-646-B

UNITED INSURANCE COMPANY OF AMERICA, an Illinois Corporation,

Defendant.

### ORDER OF DISMISSAL WITH PREJUDICE

For good cause shown, the above-entitled case is dismissed with prejudice, all issues of law and fact heretofore existing between the plaintiff and the defendant having been settled, compromised, released and extinguished.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

ROBERT C. PAYDEN,

Attorney for Plaintiff

RICHARD C. HONN,

Attorney for Defendant

### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

Defendants.	) APR 12 1991
WRAP-TEK, INC., and JIM FANUZZI,	FILED
vs.	) Case No. 90-C-1021-C
Plaintiff,	
PARAGON FILMS, INC.	)

ORDER OF DISMISSAL

Jack C. Silver, Clerk U.S. DISTRICT COURT

COMES NOW before the Court the Joint Motion to Dismiss of Plaintiff Paragon Films, Inc. and Defendants Wrap-Tek, Inc. and Jim Fanuzzi. The Court, based upon a review of the record, and being fully apprised in all relevant matters, finds that the same should be granted.

WHEREFORE, IT IS ORDERED that this action is dismissed with prejudice to the refiling thereof.

DATED THIS \_\_\_\_\_\_, 1991.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

APR 11 1991

JACK C. SILVER, CLERK U.S. DISTRICT COURT

BOB WOLF and SHEILA WOLF, d/b/a S & B LAUNDRY

Plaintiffs,

vs.

Case No. 90-C-309-B

CITY OF JAY, OKLAHOMA; and JAY UTILITIES AUTHORITY,

Defendants.

### JUDGMENT

In accordance with the Order filed April 10, 1991, sustaining the Defendants' Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendants, City of Jay, Oklahoma, and Jay Utilities Authority, and against the Plaintiffs, Bob Wolf and Sheila Wolf. Plaintiffs shall take nothing on their claims. Costs are assessed against the Plaintiffs and each party is to pay its respective attorney's fees.

Dated this // day of April, 1991.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

## FILED

IN THE UNITED STATES DISTRICT COURT FOR THE APR 11 1991

NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

GEORGANNE BRADBURY,

plaintiff,

versus

Case No. 90-C-1004-B

LIFETOUCH NATIONAL SCHOOL

STUDIOS, INC., a Minnesota
corporation,

### ORDER OF DISMISSAL

Pursuant to the joint stipulation of the parties, the above-referenced matter is hereby dismissed with prejudice to its refiling.

DATED this April, 1991.

defendant.

S/ THOMAS R. BRETT

United States District Judge for the Northern District of Oklahoma

## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN E. BURNS, et al,	)		
Plaintiffs,	)		
v.	)	90-C-705-C	FILED
LIFELINE HEALTHCARE GROUP, LTD., et al, Defendants.	)		APR 11 1991
		Jack C. Silver, Clerk U.S. DISTRICT COURT	

The court has for consideration the Report and Recommendation of the Magistrate Judge filed March 5, 1991, in which the Magistrate Judge recommended that the Motions to Dismiss Amended Complaint of defendants Allan Schulman and Naturade Products, Inc. be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

**ORDER** 

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate Judge should be and hereby is affirmed.

It is therefore Ordered that the Motions to Dismiss Amended Complaint of defendants Allan Schulman and Naturade Products, Inc. are granted.

I. DALE COOK, CHIEF

UNITED STATES DISTRICT JUDGE



### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA FILLED

BANK OF OKLAHOMA, N.A., GROVE BRANCH, formerly Bank of Oklahoma,	APR 1 1 1991  Jack C. Silver, Clerk  U.S. DISTRICT COURT		
Plaintiff,			
vs.	No. 88-C-1335-E		
THE ISLANDS MARINA, LTD., et al.,			
Defendants.	<b>)</b>		
and	, • · *		
GENMAR INDUSTRIES, INC.,			
Plaintiff,	) }		
vs.	) No. 88-C-1499-E		
FIRST NATIONAL BANK & TRUST COMPANY OF VINITA,	) ) (Consolidated) )		
Defendant.	, )		

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this \_\_\_\_\_\_ day of April, 1991 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that this litigation was originally filed in the District Court of Delaware County on June 13, 1988 and was removed to this Court. After careful review of the record in this case, including the arguments made, authorities cited and exhibited proffered, the Court hereby enters its Findings of Fact and Conclusions of Law as follows:

### FINDINGS OF FACT

- 1. On March 31, 1987 First National Bank of Vinita (hereafter "FNBV"), entered into an agreement with The Islands Marina, LTD. (hereafter "Marina"), to advance funds to finance certain boats for the Marina.
- 2. On April 6, 1987 FNBV obtained a valid security interest in (i) all Marine boats now owned or hereafter acquired and (ii) the proceeds from the sale of those boats.
- 3. The Marina defaulted on its indebtedness to FNBV and still owes FNBV \$374,578 including interest accrued to October 16, 1989 and interest accruing thereafter at the per diem rate of \$116.70.
- 4. In March, 1987 FNBV advanced \$315,000 to the Marina for the purchase of Wellcraft boats which included a 1987 40-foot 400 Scarab, Serial No. WELP2597J687 ("40-foot Scarab").
- 5. The Marina was in the business of selling Wellcraft and other boats.
- In August 1987, Emery Urfer (Hereafter "Urfer") told Gary James, President and managing agent of the Marina (hereafter "James") to sell his used 1985 42-foot Excaliber Eagle for him and to net him \$80,000 to \$85,000.
- 7. In August 1987, James sold Urfer's 1985 42-foot Excaliber
  Eagle receiving \$55,000 cash and a trade-in 30-foot
  Scarab boat worth \$25,000 to \$30,000.

- 8. Gary James picked up Mr. Urfer's 1985 42-foot boat at Mr. Urfer's private dock and delivered it to the selling dealer on the Lake of the Ozarks.
- 9. The selling dealer retained the trade-in boat for the purpose of selling the boat for Mr. Urfer and gave to Gary James \$55,000 cash to be delivered to Mr. Urfer.
- 10. Gary James delivered \$55,000 cash to Mr. Urfer on or about September 6, 1987 and thus owed Mr. Urfer \$30,000 as the balance on the sale of Urfer's 1985 42-foot Excalibur Eagle.
- 11. On September 8, 1987 Mr. and Mrs. Urfer used a part of the \$55,000 sales proceeds to buy cashier's checks in the approximate amount of \$30,000.
- 12. On September 9, 1987 Mr. Urfer entered into an agreement with Mr. Gary James of The Islands Marina to purchase the 1987 Wellcraft Boat. The purchase price was \$80,000 (\$55,000 cash plus assignment to Mr. James of the boat which was traded in on Mr. Urfer's boat). The Court notes that the contract which was misdated shows September 10, through mistake or scrivener's error.
- 13. Emery Urfer paid \$80,000 to Gary James by giving to him \$55,000 cash (\$30,000 in cashier's checks as evidenced by trial exhibits and \$25,000 remaining cash from the proceeds of the sale of his 1985 Wellcraft). The balance owed was given by Mr. Urfer by assigning to Gary James all of Mr. Urfer's interest in the "trade-in" boat which

- was at the selling dealer's marina on the Lake of the Ozarks.
- 14. The sale of the 1987 boat from Gary James The Islands
  Marina to Emery Urfer was pursuant to contract (Urfer's
  Exhibit "11") and was in the ordinary course of business.
- 15. Gary James had not been able to obtain a bona fide purchaser for the 1987 boat although he had had the boat since January or February of 1987.
- 16. Although Gary James sold the boat to Mr. Urfer at "below his costs", it was the best bona fide offer being made for the boat at the time of the sale.
- 17. The boat was delivered to Urfer's dock during the last week of September and remained there until it was shipped to Florida on April 8, 1988.
- 18. FNBV confused the 1987 boat bought by Mr. Urfer (Red) with another similar boat (Black) which FNBV believed was the boat bought by Mr. Urfer.
- 19. The duplicate MSO to the 40-foot Scarab shows James assigned title to Urfer Leasing, Inc. on September 20, 1987 before a Florida Notary Public, but James did not sign the duplicate MSO in Florida on that date.
- 20. Dealer cost on the 40-foot Scarab was \$106,668.10. Urfer purchased the 40-foot Scarab for \$80,000.
- 21. James turned down a \$93,000 offer on the 40-foot Scarab.
- 22. Urfer did not receive the warranty papers to the 40-foot Scarab.

- 23. In March 1988, Urfer called Ward Latimer, Urfer's employee and caretaker at Grand Lake, and told Latimer there was trouble with the Marina and Urfer had to get the 40-foot Scarab out of Oklahoma.
- 24. On April 8, 1988, Urfer paid Connor Marine of Florida \$2,780 for hauling the 40-foot Scarab from Urfer's Grand Lake home in Ketchum, Oklahoma to Urfer's home in Sarasota, Florida.
- 25. On April 8, 1988, Urfer first applied for title to the 40-foot Scarab in Florida, paid a late fee and received a decal which expired June 30, 1988.
- 26. Urfer admitted he had never before titled boats but ran them on a dealer's number.
- 27. On February 9, 1987, Urfer loaned James \$65,000 to purchase a Wellcraft boat, and on May 22, 1987, James repaid that \$65,000 loan.
- 28. The Marina issued a check to Mr. Urfer on August 2, 1987 in the amount of \$20,000, which check was deposited and credited to Mr. Urfer's account.
- 29. The Court finds no antecedent debt exists to create a claim by FNBV against Mr. Urfer.
- 30. The Court finds Mr. Urfer was a purchaser in the ordinary course of business.
- 31. The Court finds in favor of Emery Urfer and against FNBV as to FNBV's claim against Urfer.
- 32. Wellcraft is a manufacturer of large power boats sold to

Wellcraft dealers in the United States and abroad.

- at Grand Lake, Oklahoma, in 1983 exclusively on a C.O.D. as is, that is, on the non-credit basis that the Marina would pay for boats it had ordered by paying the Wellcraft driver delivering the boats. Under the C.O.D. system, the Wellcraft driver in exchange for payment delivers to a dealer (among other things) the boat and a manufacturer's statement of origin (an "M.S.O.") relating to the boat.
- 34. From 1983 to 1987, Wellcraft sent approximately 100 boats to the Marina on a C.O.D. basis.
- 35. In early 1987, the Marina paid Wellcraft for two C.O.D. shipments which checks not honored by the bank upon which the checks were drawn. These nonsufficient funds checks totaled \$311,870.41. The N.S.F. checks created a debt owing by the Marina to Wellcraft and made Wellcraft unwilling to extend any credit to the Marina thereafter or to ship to the Marina any further boats on any basis until the boats already shipped had been paid for.
- 36. On March 31, 1987 Paul Jagdmann, Wellcraft credit manager, called Don Yarger, President of FNBV, to inquire whether FNBV would be financing for the Marina and on what terms.
- 37. During the March 31, 1987 telephone conversation, Wellcraft did not disclose to FNBV that it held the two

insufficient funds checks totaling \$311,870.41 from the Marina.

38. After that phone call, Don Yarger, wrote a letter, dated March 31, 1987. to Wellcraft stating:

In regard to our telephone conversation of this date, I am pleased to inform you and your company that our Bank will be handling the Floor Plan Line of new Wellcraft boats for Mr. Gary James of The Islands Marina Ltd., Ketchum, Oklahoma.

We here at the Bank are very pleased with the opportunity to work with Mr. James and the Wellcraft It is our Bank's Corporation. procedure that on new boats shipped to our client, a copy of the invoice and the Manufacturer's Statement of should be sent to Origin attention here at the Bank. Upon my client's approval, our Bank will make direct payment to your company.

I look forward to working with you, and if at any time you should have any questions or if there is anything we can do to work with you, please feel free to call me.

Very truly yours,

#### Don Yarger

- 39. On March 31, 1987, FNBV advanced \$315,000 to the Marina.
- 40. Wellcraft received \$312,000 from FNBV's first advance to the Marina and applied it to the Marina's debt to Wellcraft.
- 41. Wellcraft did not respond to FNBV's letter of March 31, 1987.
- 42. On or shortly after March 31, 1987, Wellcraft and the

Bank arranged the details of how Wellcraft was to obtain approval for the payment on individual boats to be shipped thereafter to the Marina. These details were the same as those followed by Wellcraft on most of its sales to any dealer, since most of Wellcraft's sales to its dealers are sales financed by a floorplan lender of the dealer and since the procedures arranged between the Bank and Wellcraft conformed to the procedures followed by Wellcraft for every lender. Briefly, the system was that upon order of any boat by the Marina, Wellcraft was to telephone Mr. Yarger, inform him of the order, and obtain his confirmation that the boat would be covered by the floorplan, in which event Wellcraft would ship the boat and the Bank would pay Wellcraft for it directly.

Pursuant to the system devised between Wellcraft and the 43. Bank, Wellcraft recommended accepting boat orders from the Marina, obtaining telephone confirmation from Mr. Yarger, and shipping to the Marina the boats so ordered by the Marina and approved by the Bank. Wellcraft's credit department maintained an internal control system that provided for noting (at or about the time of the telephone call) on a "pro forma" (preliminary draft) copy of the invoice for each boat the dealer's order and the also provided Bank's telephone approval and maintaining a daily invoice log showing such dealer order and bank approval. Upon obtaining approvals for a boat,

it was Wellcraft's procedure that the credit department would then send the pro forma invoice to the Wellcraft billing department, where a final invoice (consisting of a package of a white original and color-coded copies) would be typed. Where the pro forma invoice indicated a bank confirmation for financing of the boat to be shipped, the final invoice indicated a typed name and address for that bank in the lender portion of the invoice form, and upon completion of the preparation of the final invoice the billing department returned it (along with an M.S.O.) to the credit department. receipt of the final invoice and M.S.O. from the billing department, the credit department's standard practice was this: if the final invoice showed a boat to be lenderfinanced, the credit department mailed the final invoice and M.S.O. to the lender at or about the time the boat was shipped; whereas if the final invoice showed a boat to be a C.O.D. shipment and only in such event, the final invoice and M.S.O. were given to the Wellcraft driver to be delivered with the boat in exchange for payment by the dealer. Except in the rare cases where the final invoice showed that a boat was prepaid or that Wellcraft was financing the boat (Wellcraft never did either for the Marina), Wellcraft's procedures did not permit delivery of a boat and accompanying papers without payment at the time of delivery.

- 44. Wellcraft did not follow the procedure set out in FNBV's letter of March 31, 1987, but continued to send invoices and MSO's to the Marina.
- 45. On May 1, 1987, Wellcraft made inaccurate notations regarding shipping and payment terms on the pro forma invoices of six 180 Classic boats shipped to the Marina COD, showing both COD and credit approved on Wellcraft records and ultimately paid for by the Marina on May 26, 1987 with an advance from FNBV.
- 46. On May 18, 1987 Wellcraft made inaccurate notations regarding shipping and payment terms on the pro forma invoices of a 26-foot Scarab, 220 Elite, and 18-foot Classic; Wellcraft shipped those boats to the Marine COD though Wellcraft records showed both COD and credit approved by FNBV; the Marina paid for the boats on June 9, 1987 and June 30, 1987 with advances from FNBV.
- 47. On June 15, 1987 Wellcraft made inaccurate notations on the pro forma invoices of three 18-foot Classics by showing credit approval by Don Yarger at FNBV although Mr. Yarger could not have approved credit as he was out of the Bank at a golf tournament on that date.
- 48. Wellcraft records reflect inaccuracy on twelve of fourteen boats shipped to the Marina after March 31, 1987 and paid for by the Marina with FNBV advances.
- 49. By the end of June 1987, the Marina had reached its credit limit with FNBV and James was aware that he could

not finance any more boats through FNBV.

- 50. At the Wellcraft boat show in Sarasota, Florida, the first week of July 1987 (July 1987 boat show) James told Wellcraft officials he could not buy boats because he had used his entire line of credit.
- 51. At the July 1987 boat show, Wellcraft introduced James to Chrysler First Wholesale Credit (hereafter "CFWC") so that the Marina could establish another line of credit to buy Wellcraft boats.
- 52. On July 7, 1987, James signed a Dealership Agreement with Wellcraft for 1988 and all CFWC documents necessary to set up a \$500,000 line of credit with CFWC.
- 53. Wellcraft records include a pro forma invoice no. 38236 to a 1987 43-foot Portofino, WELC3336E787, 1987 (re-foot Portofino) showing "order date September 10, 1986, OK/EL/Gary/Don, 6/4, E546" but no Wellcraft employees nor Don Yarger recall any phone conversation where Mr. Yarger approved financing of this boat.
- 54. Wellcraft prepared an invoice No. 38236 to the 1987 43foot Portofino showing financing to be by FNBV and
  showing a "Shipped and Invoice Date: June 15, 1987".
  The invoice bears the notation "Don".
- 55. Wellcraft also prepared another invoice to the same 1987
  43-foot Portfino showing financing to be by CFWC and
  showing a "Shipped and Invoice Date: September 14,
  1987".

- 56. On or about September 25, 1987 CFWC wire transferred \$144,512.20 on to Wellcraft on behalf of the Marine to pay for the 1987 43-foot Portofino.
- 57. Wellcraft records include a July 7, 1987 pro forma invoice no. 50904 to a 1988 32-foot St. Tropez, Serial No. WELC3530G788 (1988 32-foot St. Tropez) showing "order date 7/1/87, ok/CAM/Don 7/20/87" but no Wellcraft employee nor Don Yarger recall any phone conversation where Mr. Yarger approved financing of this boat.
- 58. Wellcraft prepared an invoice to the 1988 32-foot St.

  Tropez showing financing to be by FNBV and a "Shipped and
  Invoice Date: July 23, 1987". The invoice bears the
  notation "Don".
- 59. Wellcraft prepared another invoice on the same 1988 32foot St. Tropez showing financing to be by CFWC and
  showing a "Shipped and Invoice Date: September 11,
  1987".
- 60. On or about September 25, 1987 CFWC wire transferred \$73,818.70 to Wellcraft on behalf of the Marina to pay for the 1988 32-foot St. Tropez.
- 61. CFWC loaned money to the Marina on 43-foot Portofino and 32-foot St. Tropez on the belief that CFWC would receive a purchase money security interest in those boats.
- 62. Wellcraft prepared an invoice to the 1987 50-foot Meteor, Serial No. WELP3065C787 (1987 50-foot Meteror), showing financing to be by FNBV and showing a "Shipped and

Invoice Date: July 21, 1987"; the invoice bears the notation "Don" but no Wellcraft employee nor Don Yarger recall any phone conversation where Mr. Yarger approved financing of this boat.

- 63. Wellcraft shipped the 1987 50-foot Meteor to the Marina and the Marina is still indebted to Wellcraft for this boat.
- 64. James testified that he discussed all three of these boats with Wellcraft officials at the July 1987 boat show in Florida and that Wellcraft agreed that the 1987 43-foot Portofino and 1988 32-foot St. Tropez would be financed with the Marina's new \$500,000 line of credit with CFWC and that the 1987 50-foot Meteor would be shipped to the Marina on 90-day open account.
- 65. The Marina received all three boats at issue after the July 1987 boat show.
- 66. Paul Jagdmann denied knowledge of any agreement made between James and a Wellcraft salesman at the July 1987 boat show regarding the three boats but admitted that in August 1987 he knew FNBV would not advance funds to the Marina to finance these three boats.
- 67. In August 1987 Don Yarger told Wellcraft that FNBV would not advance funds to the Marina for payment of the three boats at issue; the Marina had reached its credit limit.
- 68. Jagdmann testified that in August 1987 he called James and advised him that Wellcraft was going to pick up the

three boats at issue; but after visiting with James he agreed the Marina could keep the three boats as James thought the 50-foot Meteor was sold and the 1987 43-foot Portofino and 1988 32-foot St. Tropez were to be financed through CFWC.

- 69. The Marina reported to Wellcraft that retail sale of the 50-foot Meteor and repayment to Wellcraft were imminent and that the problem of non-payment would soon be taken care of. These assurances continued unabated into 1988, along with assurances beginning at the end of 1987 from the Marina that a financier named Coster would soon arrive with new money to take care of the various financial problems that at the end of 1987 began to be evident to Wellcraft.
- 70. On October 26, 1987, approximately 90 days after the 50foot Meteor was received at the Marina, the Marina sent
  Wellcraft a check for \$232,096.21 in payment for the 50foot Meteor; Wellcraft attempted to negotiate this check,
  but it was returned insufficient funds.
- 71. On November 21, 987 approximately 120 days after the 50foot Meteor was received at the Marina, the Marina sent
  Wellcraft a check for \$232,096.21 in payment for the 50foot Meteor; Wellcraft attempted to negotiate this check,
  but it was returned insufficient funds.
- 72. Glen Mann testified that Wellcraft's salesman, Max Kuykendall, approached him at the Tulsa Boat Show in

January 1988 wanting to know why James was not paying for the 50-foot Meteor. Also, Glen Mann testified that Wellcraft called many times attempting to collect from James.

- 73. On February 18, 1988, Paul Jagdmann came to the Marina to repossess the 50-foot Meteor but after arriving at the Marina agreed with James to leave the boat as James advised Jagdmann the boat was sold.
- 74. On or about February 20, 1988 the Marina sold the 50-foot Meteor to International Sales and Leasing.
- 75. On February 26, 1988 Paul Jagdmann called Don Yarger requesting that if Gary James brought money in payment for two 50-foot Meteors to FNBV, FNBV would release MSO's and invoices to James that Wellcraft would send, and FNBV would forward the money to Wellcraft.
- 76. On or about February 26, 1988 Wellcraft prepared and sent a dummy invoice to the same 1987 50-foot Meteor showing financing to be by FNBV and showing a "Shipped and Invoice Date: 2-26-88".
- 77. On or about February 26, 1988 Wellcraft prepared and sent

  (i) an invoice to a different 1988 50-foot Meteor, Serial

  No. WELP3998J788 (Tera Miranda 50-foot Meteor), showing

  financing to be by FNBV and showing a "Shipped and

  Invoice Date: 2-26-88" and (ii) an MSO to FNBV which

  stated that the Tera Miranda 50-foot Meteor had been

  transferred to the Marina on February 26, 1988.

- 78. FNBV agreed to assist Wellcraft but James never showed up with the money for the two 50-foot Meteors; FNBV released the MSO's and invoices to Max Kuykendall, a Wellcraft representative, after Don Yarger called Paul Jagdmann for the okay to release the documents.
- 79. FNBV did not receive the MSO's and invoices to the three boats at issue (excluding the dummy invoice and MSO to the 50-foot Meteor dated 2-26-88.)
- 80. James never asked FNBV to fiance the three boats at issue.
- 81. All of Wellcraft accounts receivable are listed in the names of its dealers rather than in the name of any financing institution.
- 82. From August 1987 to October 1988, Wellcraft repeatedly attempted to collect its debt from the Marina but never attempted to collect its debt from FNBV.
- 83. In June 1988 BOKG commenced this litigation which included FNBV, CFWC and Wellcraft as Defendants.
- 84. CFWC demanded repayment from Wellcraft for the 1988 32foot St. Tropez and the 1987 43-foot Portofino after
  learning its putative purchase money security interest
  failed because the boats were delivered to the Marina
  prior to financing and its security interest was thus
  subordinate to FNBV's security interest.
- 85. Wellcraft sued FNBV in October 1988 which was the first time that Wellcraft ever asserted any contract between

FNBV and Wellcraft.

- agreement with FNBV for payment of the three boats as evidenced by (i) Wellcraft placing title to the three boats in the Marina prior to forwarding the title documents; (ii) Wellcraft's many collection efforts directed toward the Marina and its two attempts to negotiate payment from the Marina; (iii) Wellcraft's records show the debt to be the Marina's; (iv) Wellcraft's placing of the financing of two of the boats with CFWC; and (v) Wellcraft's failure to advise FNBV of its claim until initiation of this lawsuit in October 1988, 15 months after FNBV's alleged breach.
- 87. The Court finds Wellcraft, by placing the financing of two of the boats with CFWC and looking only to the Marina for payment on the third boat, led FNBV to reasonably believe that Wellcraft would not require FNBV to perform any agreement to finance the three boats until the October 1988 lawsuit was commenced at which time the boats were gone and it was too late for FNBV to perform as such performance at that time would work a material injustice on FNBV.

### CONCLUSIONS OF LAW

- A. Jurisdiction and Venue
- 1. The FSLIC may remove an action to which it is a party to

- a federal court unless (i) only the rights or obligations of investors, creditors or stockholders, and a state chartered institution are at issue in the suit and (ii) the rights and obligations are to be determined only by the state law. 28 U.S.C. §1730(k)(1)(c).
- of an action in which an insolvent institution is a party, the FSLIC is deemed a party, even though not formally joined, and may remove. North Mississippi Savings & Loan Assoc. v. Hudspeth, 756 F.2d 1096, 1100 (5th Cir. 1985).

#### B. <u>Urfer</u>

- 1. A buyer in the ordinary course of business takes free of a security interest created by the seller even though the security interest is perfected and even though the buyer knows of its existence. Okla.Stat.tit. 12A, §9-307(1).
- 2. "Buyer in the ordinary course of business' means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party buys in ordinary course from a person in the business of selling goods of that kind." 12A §1-201(9).
- In absence of fraud, accident or mistake, evidence of prior or contemporaneous oral agreement is inadmissible to vary the terms of a written contract apparently complete on its face as to an element or matter with

which written contract deals, or as to subject so closely bound to matter of written contract that parties would ordinarily be expected to have embodied it therein. Title 15 O.S. (1981) Section 137.

- 4. Where consideration stated in a written contract is more than mere recital of fact or acknowledgement of payment and is of contractual nature, evidence of parol agreement for additional element of consideration not contained in writing is inadmissible. Title 15 O.S. (1981) Section 137.
- 5. The parol evidence rules precludes the admission in any case of parol or extrinsic evidence to show some other prior or contemporaneous agreement inconsistent with or contradictory to the terms of the written contract, in the absence of some one of the well recognized exceptions to that rule, such as fraud, accident or mistake. 70 ALF 752, Page 770.
- 6. Formation of a Contract: (1) a contract for sale of goods may be in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract; (2) an agreement sufficient to constitute a contract for the sale may be found even though the moment of its making is undetermined; (3) even though one or more of the terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a

- reasonably certain basis for giving an appropriate remedy. Title 12A O.S. Section 2-204.
- 7. An executed contract is one, the object which is fully performed. Title 15 O.S. Section 177.
- 8. Terms of a contract are restricted to intention of parties. A contract extends only to those things concerning which it appears that the parties intended to contract. Tittle 15 O.S. Section 164.
- 9. Words to be taken in ordinary sense Exceptions. The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed. Tittle 15 O.S. Section 160.
- 10. Intention is to be ascertained from writing. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible, subject, however, to other provision of this article. Title 15 O.S. Section 155.
- or explain contract terms by parol evidence unless its terms are ambiguous. HBOP, LTD. v. Delhi Gas Pipeline Corporation, Okl.App., 645 P.2d 1042 (1982); Lindhorst v. Wright, Okl., 616 P.2d 450 (1980); AMOCO Production Company v. Lindley, Okl., 609 P.2d 733 (1980).

## C. Genmar-Wellcraft

- 1. No consideration/detrimental reliance exists to support a bank's/finance's promise to pay a manufacturer directly for manufactured goods where the manufacturer (i) places ownership of goods in a dealer's name prior to forwarding title documents to the bank/finance, (ii) attempts to negotiate offered payment from the dealer, and (iii) admits the dealer owes the debt. Commodore Home Systems, Inc. v. Citicorp, 780 P.2d 674, 678 §2 (Okla. 1989).
- 2. Where by the course of conduct of one party to the contract entitled to the performance of certain terms or conditions thereof, the other party has been led to believe, as a man of average intelligence, that such performance will not be required, until it has become too late to perform, or until to insist upon performance would work material injustice, the person who has so conducted himself is barred from asserting the right he had. Campbell v. Frye, 145 Okla. 213, 215, 292 P. 7 (1930).
- The parties' intention is often best evidenced by their conduct in the execution of a contract between them, and the parties' course of conduct is entitled to great weight in determining the proper interpretation of an agreement. Whitebird v. Eagle Picher Co., 390 F.2d 831 (10th Cir. 1968), and Tulsa Grain Storage Co. v. Commodity Credit Corp., 231 F.Supp. 432 (N.D. Okla.

1964).

- 4. A person may waive a right by conduct or acts which indicate an intention to relinquish it, or by such failure to insist upon it that a party is estopped to afterwards set it up against his adversary. Campbell v. Frye, 145 Okla. 213, 215, 292 P. 7 (1930).
- 5. A party may be estopped from asserting rights which might have otherwise existed under the following circumstances:
  - "1. There must exist a false representation or concealment of material facts.
  - 2. It must have been made with knowledge, actual or constructive, of the facts.
  - 3. The party to whom it was made must have been without knowledge of the facts.
  - 4. It must have been made with the intention that it should be acted upon.
  - 5. The party to whom it was made must have relied on, or acted upon it, to his prejudice."

Midland Mortgage Co. v. Sanders England Investments, 682 P.2d 748, 750 (Okla. 1984); Apex Siding & Roofing Co. v. First Federal Savings & Loan Ass'n, 301 P.2d 352, 355 (Okla. 1956).

6. Where an injured party finds that a wrong has been perpetrated on him, he should use all reasonable means to arrest the loss. He cannot stand idly by and permit the loss to increase, and then hold the wrongdoer liable for the loss he might have prevented. Tulsa Municipal Airport Trust v. National Gypsum Co., 551 P.2d 304 (Okla. 1976).

- 7. Scope of injured party's effort to mitigate damages is circumscribed by following factors: It must be in good faith; it must be executed with reasonable skill, prudence, and efficiency; it must be reasonably warranted by and proportioned to the injury and consequences to be averted; and it must be undertaken in reasonably justified belief that it will avoid or reduce damage otherwise to be expected from wrongdoing. Tulsa Municipal Airport Trust v. National Gypsum Co., 551 P.2d 304.
- 8. An implied covenant to act in good faith and to deal fairly exists in a contract. Eke Builders, Inc. v. Quail Bluff Associates, 714 P.2d 604 (Okla. 1985).

IT IS THEREFORE ORDERED that Emery Urfer prevails on FNBV's claim against him and FNBV prevails on its claim against Genmar-Wellcraft. Counsel for the parties are directed to prepare and file an agreed form of Judgment, encompassing this ruling as well as the rulings in this Court's Orders on Motions for Summary Judgment which Orders are being contemporaneously filed. Such agreed form of Judgment is to be filed within twenty (20) days of these Findings of Fact and Conclusions of Law.

ORDERED this 9 day of April, 1991.

AMES O. ÆLLISON

UNITED STATES DISTRICT JUDGE NORTHERN DISTRICT OF OKLAHOMA

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

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) )
) No. 90-C-306-C
FILED
} APR 11 1991 ⟨\\
Jack C. Silver, Clerk U.S. DISTRICT COURT

# ORDER DISMISSING DEFENDANT NEWELL COMPANY WITHOUT PREJUDICE

Defendant.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant Newell Company be and hereby is dismissed from the above named action as a Defendant without prejudice.

JUDGE OF THE DISTRICT COURT